# United States Court of Appeals for the Second Circuit



**APPENDIX** 

# 76-1195



### United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1195

UNITED STATES OF AMERICA,

Appellant,

\_\_v.\_\_

ANTONIO FLORES.

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

**GOVERNMENT'S APPENDIX** 

MAY 24 1976

JR. MARI BRAND DITT

ROBERT B. FISKE JR. United States Attorney for the United States of America,
United States Courthouse Annex,
One St. Andrew's Plaza,
New York, New York 10007.

PAGINATION AS IN ORIGINAL COPY

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## UNITED STATES DISTINUTED BONSAL 173 CRIM. 19

| D C. Form No. 1 | CONTROL OF THE STATE OF THE PARTY OF THE PAR | TLE OF CASE                                   |                 | Parameter Commence     | ATTORNETS                               | THE RESERVE OF THE PARTY. |
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|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | NITED STATES                                  |                 | For U. S.: 26          | COMMERCIAL CONTRACTOR CONTRACTOR        |                           |
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                               |                 | Jeffrey Harr           |                                         |                           |
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|                 | for all                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 16 defendants                                 |                 |                        |                                         |                           |
|                 | see y                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | page 2                                        |                 | İ                      |                                         |                           |
|                 | *******                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                               |                 | ļ                      |                                         |                           |
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|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                               |                 | 1                      |                                         |                           |
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|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                               |                 | 1                      |                                         |                           |
| STAT            | TISTICAL RECORD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | СОВТЬ                                         | DATE            | NAME OR<br>RECEIPT NO. | REC.                                    | DISB.                     |
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | -                                             |                 | RECEIPT NO.            | -                                       |                           |
| J.S. 2 maile    | ed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Clerk                                         |                 |                        |                                         |                           |
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | V - 1-1                                       |                 | ļ                      |                                         |                           |
| J.S. 3 maile    | 11 11 7 (5.16)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Marshal                                       | 1               | <u> </u>               |                                         |                           |
| Violatio /      | 13,11 7,5,16)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Docket fee                                    |                 |                        |                                         |                           |
| mela 21:        | 173, 17h conspira                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                               | ++              | +                      | 1                                       |                           |
| to impor        | t narcotics (ct                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                               |                 |                        |                                         |                           |
|                 | 1791 trafficing                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                               | ++              | <del> </del>           | <del> </del>                            | +                         |
|                 | nd from a Fed pendion (ct.2)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | -                                             |                 |                        | 1 1                                     |                           |
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                               |                 |                        | +                                       | + +-                      |
| 75/0            | COUNTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                               | -               | +                      | + + -                                   | +                         |
| DATE            | 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                               | PROCEEDINGS     | <del></del>            | *************************************** | *                         |
| 1-8-73          | Filed Indictmen                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | nt - B/Warrents order                         | red as to certa | in defendants          | . Indict.                               | ent                       |
| A-X-13          | ordered sealed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                               | Bor             | sal, J.                |                                         |                           |
| 1-8-73          | Bench Wartents                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | issued.                                       |                 |                        |                                         |                           |
|                 | 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                               |                 |                        |                                         |                           |
| 1-23-73         | Indictment ord                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ered unsealed -<br>Atty. present) Deft.       | nleads not gu   | ilty. 10 days          | for motio                               | ns. Deft.                 |
|                 | ordered p                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | hotographed and fing                          | erprinted. Ba   | 11 \$10,000.00         | unsecured                               | P.R.B. to                 |
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | by 4 P.M. this date                           |                 | J 6                    | Nace                                    |                           |
|                 | D. Burgos- (At                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | ty. present) pleads thed and fingerprinted    | d. Sail fixed   | at \$50.000.00         | ) - Deft. r                             | emanded.                  |
|                 | H. Rivera- (At                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | tv. present) pleads r                         | not guilty. 10  | days for moti          | ons. Deft                               | . ordered                 |
|                 | photograp                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | hed and fingerprinted                         | . Bail fixed    | at \$75,000.00         | - Deft. r                               | emanded.                  |
|                 | Dhotograp                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | tty. present) pleads<br>hed and fingerprinted | d. Bail fixed   | at \$50,000.00         | Deft.                                   | remanded.                 |
|                 | Pinnebiap                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                               |                 | Metzn                  | er, J.                                  |                           |
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                               |                 |                        |                                         |                           |
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CRIM 19 -- page 2 --

| 7       | 73 CRIM 19 page 2                                                                                                 |                                                                                                                                                 |
|---------|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| DATE    | PROCEEDING                                                                                                        |                                                                                                                                                 |
|         | UNITED STATES OF AMERICA                                                                                          |                                                                                                                                                 |
|         | 1) ANTONIO FLORES                                                                                                 | ct.l                                                                                                                                            |
|         | 2) SCEPH LUCAROTTI                                                                                                | 1                                                                                                                                               |
|         | 3) RALPH SANTANA                                                                                                  | . 1                                                                                                                                             |
|         | L) /LILLIAN SANTANA                                                                                               | 1                                                                                                                                               |
|         | 5) DELIA BURGOS, a/k/a "Dee"                                                                                      | 1                                                                                                                                               |
|         | 6) HERMAN RIVERA                                                                                                  | i                                                                                                                                               |
|         | 7) JEAN EATISTE CROCE, a/k/a JFAN BATI                                                                            | 1                                                                                                                                               |
|         | MERIURD MARI, a/k/a "IE FRISE"                                                                                    | 1 holled w/sof 12                                                                                                                               |
|         | 9) HOPACIO QUINONES                                                                                               | 1 and 2                                                                                                                                         |
|         | 10) JOSEPH MARRO                                                                                                  | 1                                                                                                                                               |
|         | 11) JEAN CARDON                                                                                                   | 1                                                                                                                                               |
|         | 12) ANTHONY SECURA                                                                                                | 1                                                                                                                                               |
|         | 13) GEORGE ALVAREZ                                                                                                | 1                                                                                                                                               |
|         | LI) JOHN DOE, a/k/a ROHER DU BUIS                                                                                 | 1                                                                                                                                               |
|         | 15) #OBEPT MARTINEZ                                                                                               | 1                                                                                                                                               |
|         | 16) FÉLIX OLIVIE                                                                                                  | 1                                                                                                                                               |
| *107802 |                                                                                                                   |                                                                                                                                                 |
| 1-23-73 | Delia Burgos- Filed noti e of appearance<br>NYC 10019 (Phone 586-1410)                                            | by Martin J. Siegel, 250 W. 57th St.,                                                                                                           |
| 1-23-73 | Quinones- Filed unsecured PRB in                                                                                  | the amount of \$10.000.                                                                                                                         |
| 1-31-73 | Harris. Secured by deeds, depos                                                                                   | cured and co-signed as indicated, by US Atty. its or bank deposits books by Mrs. Rizzo, s. Jefferson. 24 hours for posting security. Bonsal, J. |
| 2-1-73  | Burgos- Filed unsecured P.R.E. in the sur<br>Victoria Morales, Olga Jefferson<br>receipted for U.S. Atty. by Hele | and Dolores Quesada. (Bank Books, etc.                                                                                                          |
| 2-2-73  |                                                                                                                   | Remanded in lieu of bail Ronsal, J.                                                                                                             |
| 2-6-73  | HERMAN RIVERA-Filed afdvt.of J.Harris, AUS                                                                        | A dtd.2-6-73 in opposition to bail reduction.                                                                                                   |

3 ---page 3----

|        | PROCEEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2-5-73 | HERMAN RIVERA - Filed affdyt, and notice of notion for reduction of bail.                                                                                                                                                                                                                                                                                                                                                                                             |
| 2-2-73 | RALPH SANTANA- Filed a ffdvt. of Jeffrey Harris, ANSA for a Writ of H.C<br>ret. 2-14-73                                                                                                                                                                                                                                                                                                                                                                               |
| 2-2-73 | ANTHONY SPGURA- Filed affect. of Jeffrey Harris, AUDA for a Writ of H.C                                                                                                                                                                                                                                                                                                                                                                                               |
|        | ret. 2-14-73                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 2-5-73 | H. QUINONES- Filed affect, and notice of motion for severance, to inspect Grand Jury Minutes, for a bill of particulars, discovery & inspection and to                                                                                                                                                                                                                                                                                                                |
|        | suppress.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| -8-73  | H. Rivera, Bail \$75,000, to be secured by \$5,000, surety, Bond or proper                                                                                                                                                                                                                                                                                                                                                                                            |
|        | ty. Bousal,J.                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 2-5-73 | J.B. CROCE- A. FLORES- J. LUCAROTTI- J. MARRO- L. SANTANO, J. CARDON- JOHN DOE-                                                                                                                                                                                                                                                                                                                                                                                       |
|        | B. MARI- R. MARTIMEZ and F. OLIVIE- Court directs entry of not quilty pleas.                                                                                                                                                                                                                                                                                                                                                                                          |
|        | R. SANTANA, D. BURGOS, H. RIVERA, H. QUINONES, A. SEGURA, G. ALVAREZ ordered                                                                                                                                                                                                                                                                                                                                                                                          |
|        | marked off Cal. (Rm 110) Tyler, J.                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 2-9-73 | Harman Rivera-Filed surety bond in the amount of \$75,000 secured by \$5,000.                                                                                                                                                                                                                                                                                                                                                                                         |
|        | by \$5,000.                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|        | R. Santana- Filed affidavit and notice of motion for discovery and                                                                                                                                                                                                                                                                                                                                                                                                    |
|        | R. Santana- Filed affidavit and notice of motion for discovery and                                                                                                                                                                                                                                                                                                                                                                                                    |
| -14-73 | R. Santana- Filed affidavit and notice of motion for discovery and inspection, bill of particulars, severance for trial from other defts                                                                                                                                                                                                                                                                                                                              |
| 22413  | R. Santana- Filed affidavit and notice of motion for discovery and inspection, bill of particulars, severance for trial from other defts dismissing indictment etc.  Ralph Santana(Produced on Writ) (atty, present) Pleads notguilty.                                                                                                                                                                                                                                |
| -14-73 | R. Santana- Filed affidavit and notice of motion for discovery and inspection, bill of particulars, severance for trial from other defts dismissing indictment etc.  Ralph Santana(Produced on Writ) (atty. present) Pleads notguilty.  A. Segura-Produced on Writ(Atty. present) Pleads not Guilty. Bonsal, J,  G. Alvarez- Filed the following papers received from Mag. Raby:                                                                                      |
| -14-73 | R. Santana- Filed affidavit and notice of motion for discovery and inspection, bill of particulars, severance for trial from other defts dismissing indictment etc.  Ralph Santana(Produced on Writ) (atty, present) Pleads notguilty.  A. Segura-Produced on Writ(Atty, present) Pleads not Guilty, Bonsal, J, G. Alvarez- Filed the following papers received from Mag. Raby:  Docket entry sheet.                                                                  |
| -14-73 | R. Santana- Filed affidavit and notice of motion for discovery and inspection, bill of particulars, severance for trial from other defts dismissing indictment etc.  Ralph Santana(Produced on Writ) (atty, present) Pleads notguilty.  A. Segura-Produced on Writ(Atty, present) Pleads not Guilty, Bonsal, J,  G. Alvarez- Filed the following papers received from Mag. Raby:  Docket entry sheet.                                                                 |
| -22413 | R. Santana- Filed affidavit and notice of motion for discovery and inspection, bill of particulars, severance for trial from other defts dismissing indictment etc.  Ralph Santana(Produced on Writ) (atty, present) Pleads notguilty.  A. Segura-Produced on Writ(Atty, present) Pleads not Guilty, Bonsal, J,  G. Alvarez- Filed the following papers received from Mag. Raby:  Docket entry sheet.  Filed appearance bond, \$50,000, P.R.B. Sec.by \$5,000, surety |

:!

73 CRIM 19

| DATE    | PROCEEDINGS                                                                                                                       |
|---------|-----------------------------------------------------------------------------------------------------------------------------------|
| 2-27-73 | D. Furgos- Filed remand dated 1-31-73 (2-1-73 deft. released upon posting bond)                                                   |
| 2-27-73 | H. Rivera- Filed remand dated 2-8-73 (2-9-73 made bail)                                                                           |
| 2-27-73 | D. Burgos- Filed remand dated 1-23-73                                                                                             |
| 2-27-73 | H. Rivera- Filed remand dated 1-23-73                                                                                             |
| 2-27-73 | G. Alvarez- Filed remand dated 1-23-73                                                                                            |
| 2-27-73 | G. Alvarez- Filed remand dated 2-2-73 (2-5-73 released on tail)                                                                   |
| 3-22-73 | Anthony Segura-Filed notice of appearance by Atty Henry K. Chapran 335 B'way N.Y.C. dtd. 3-13-73.                                 |
| 3-23-73 | Antonio Flores-Filed warrant of arrest unexecuted dtd 1-8-73., attached cop                                                       |
|         | of the indictment.  Flores-Filed affidavit of Aneta Seraphides French Interpreter.                                                |
|         |                                                                                                                                   |
|         | Flores-Filed declaration of Edouard Rimbaud. Flores-Filed affidavit of Edouard Rimbaud.                                           |
| 3-27-73 | Flores-Filed affidavit of Michael A. Waniewski Special Agent.                                                                     |
| 3-27-73 | Flores-Filed affidavit of AUCA Toffray Harris                                                                                     |
| 3-27-73 | Flores-Filed affidavit of AUSA Jeffrey Harris.                                                                                    |
| 4-4-73  | Flores-Filed affidavit and application to be determined by the Court for                                                          |
| 4-18-7  | QUINOWES- Filed affdvt. of defendant requesting a bill of partic ars and for certain                                              |
|         | statements and discovery in preparation for motions to sever, for separate                                                        |
|         | trial and to suppress.                                                                                                            |
| 4-24-73 | Horacio Quinones-Filed notice of appearance by J. Howard Rossbach, Esq., 500 Fifth Ave. New York, N.Y.10036, (868-3120)           |
| 4-23-73 | ANT. FLORES-Filed CJA 20 copy 5 appointing J. Howard Rossbach dtd.3-22-73-Bonsal, J.                                              |
| 5-30-7  | Quinones- Filed Governments affdvt. in partial opposition to defendants motion for a bill of particulars, discovery & inspection. |
|         |                                                                                                                                   |

73 Cr 19 CRIMINAL DOCKET

| DATE      | PACCECUINGS                                                                                                                                                                                                         |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| -12-73 H  | doracio Quinones-Filed affidavit and notice of motion for furthere                                                                                                                                                  |
|           | Bill of Particulars, to dismiss first count of the indictment and                                                                                                                                                   |
|           | for severing the trial of deft. Quinones on the first count from                                                                                                                                                    |
|           | that of the other defts.                                                                                                                                                                                            |
| 6-13-73 H | ORACTO QUINONES-Filed affdrt & notice of motion to suppress-Ret, date to be fixed.                                                                                                                                  |
|           | ANTHONY SEGURA-Filed writ of habeas corpus with Marshal's return-Writ Satisfied                                                                                                                                     |
|           | 5-17-73Ryan, J.                                                                                                                                                                                                     |
| 6-21-73 0 | ase adjd to 10-22-73 for trial.                                                                                                                                                                                     |
| 6-21-73 A | NTHONY SEGURA - Case dismissed upon motion by counselBonsal, J.                                                                                                                                                     |
| 7-5-73    | Segura- Filed CJA appointment of Counsel dtd 3-14-73 Henry Chapman.Bonsa                                                                                                                                            |
| 7-5-73    | Segura-i'miled CJA copy I form 20 to the A.O. for payment, Bonsal, J.                                                                                                                                               |
| 10-9-735  | egura-Filed demand for speedy trial.                                                                                                                                                                                |
| 10-30-73  | BERNARD MARI- Entered and filed Nolle Prosequi. Bonsal, J.                                                                                                                                                          |
| 10-19-73  | A. FLORES- filed Govt's affdyt for writ of habeas corpus ad                                                                                                                                                         |
|           | testificandum. ret: 10-29-73.                                                                                                                                                                                       |
| 10-19-73  | R. SANTANA- filed Govt's affdyt for writ of habeas corpus ad pros.<br>ret: 10-29-73.                                                                                                                                |
| 10-15-73  | HERMAN RIVERA)-both deft- filed notice of appearance of atty, DELIA BURGOS ) by Diller & Samukler,-Howard J. Diller,299 Bway NYG 10007 347-5554.                                                                    |
|           | Filed ORDER that Arthur L. Harrow, 43 Barrow St, NYC 10014, is added to the Panel of Attys for the sole prupose of representing the deft C. Alveres in the trial of the above entitled action, etc.  Metzner, J. mn |
|           | Accenter, y.                                                                                                                                                                                                        |
| 11-8-73   | A. FLORES - filed writ of habeas co. and testificandum for Terry Paul Jones. Writ adj'd to 11-5-73. Weinfeld, J.                                                                                                    |
| . 16 7/   | H. QUIONONES- filed unsecured personal recognizance bond in the sum of \$10,000. pending appeal.                                                                                                                    |
| 1-15-74   | som or Areleast bearing abbasis                                                                                                                                                                                     |

|                                  | 73 Cr 19 Judge Bonsal Page 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DATE                             | FROCEDINGS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| -22-74                           | Filed true-copy of order dtd 10-19-73, for writ of habeas corpus ad pros. Writ satisified. 1-14-74. Bonsal, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 15/74                            | Filed deft H. Rivera's notice of motion re: exoneration of deft's bail.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| /5/74                            | Filed MEMO-END, on motion of deft H. Rivera to exonerat bail. " Motion to exonerate bail is granted. Bonsal, J. mn                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1/30/74                          | J. Lucarotti, A. Florest Santan A.J. Crace, James Carbon, V. D.  R. MARTINEZ, F. OLIVIE.  In all Line Case                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 1/8/74                           | H. Quinones- filed CJA form 20 approval for payment of fees of attyl                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|                                  | mailed notices by CJA Clerk. Ronsal, I.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| /17/75                           | mailed notices by CJA Clerk. Bonsal, I.  Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones  2/5/74 writ satisfied upon application of AUSA. Lasker, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                                  | Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| )1-14-76                         | Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones  2/5/74 writ satisfied upon application of AUSA. Lasker, J.  Deft. Antonio Flores-produced on writ from Spain. Court directs plea of not guilty. Bail set at \$3,000,000. cont'd. deft. cont'd.                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 02-23-76                         | Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones  2/5/74 writ satisfied upon application of AUSA. Lasker, J.  Deft. Antonio Flores-produced on writ from Spain. Court directs plea of not guilty. Bail set at \$3,000,000. cont'd. deft. cont'd. in custody. Bonsal.J.  Filed Notice of Appearance of atty. for deft. Antonio Flores- by Howard J. Diller- Diller, Schmukler & Asness 345 Park Ave. N.Y.C. 10022 tele: (212) 371-1400.  Filed notice of motion for deft. A. Flores-re: precluding U.S. from                                                                                                                                                                         |
| 2-23-76                          | Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones  2/5/74 writ satisfied upon application of AUSA. Lasker, J.  Deft. Antomic Flores-produced on writ from Spain. Court directs plea of not guilty. Bail set at \$3,000,000. cont'd. deft. cont'd. in custody. Bonsal, J.  Filed Notice of Appearance of atty. for deft. Antonic Flores- by Howard J. Diller- Diller, Schmukler & Asness 345 Park Ave. N.Y.C. 10022 tele: (212) 371-1400.  Filed notice of motion for deft. A. Flores-re: precluding U.S. from intruducing certain evidence., etc.                                                                                                                                    |
| 2-23-76                          | Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones  2/5/74 writ satisfied upon application of AUSA. Lasker, J.  Deft. Antomio Flores-produced on writ from Spain. Court directs plea  of not guilty. Bail set at \$3,000,000. cont'd. deft. cont'd.  in custody. Bonsal, J.  Filed Notice of Appearance of atty. for deft. Antonio Flores- by  Howard J. Diller- Diller, Schmukler & Asness 345 Park Ave.  N.Y.C. 10622 tele: (212) 371-1400.  Filed notice of motion for deft. A. Flores-re: precluding U.S. from  intruducing certain evidence., etc.                                                                                                                               |
| 2-23-76                          | Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones  2/5/74 writ satisfied upon application of AUSA. Lasker, J.  Deft. Antomio Flores-produced on writ from Spain. Court directs plea of not guilty. Bail set at \$3,000,000. cont'd. deft. cont'd. in custody. Bonsal, J.  Filed Notice of Appearance of atty. for deft. Antonio Flores- by Howard J. Diller- Diller, Schmukler & Asness 345 Park Ave. N.Y.C. 10622 tele: (212) 371-1400.  Filed notice of motion for deft. A. Flores-re: precluding U.S. from intruducing certain evidence., etc.                                                                                                                                    |
| 02-23-76<br>02-27-76<br>03-24-76 | Filed affdvt. for writ of habeas corpus ad testificandum for T. Jones  2/5/74 writ satisfied upon application of AUSA. Lasker, J.  Deft. Antomio Flores-produced on writ from Spain. Court directs plea of not guilty. Bail set at \$3,000,000. cont'd. deft. cont'd. in custody. Eonsal. J.  Filed Notice of Appearance of atty. for deft. Antonio Flores- by Howard J. Diller- Diller, Schmukler & Asness J45 Park Ave. N.Y.C. 10022 tele: (212) 371-1400.  Filed notice of motion for deft. A. Flores-re: precluding U.S. from intruducing certain evidence., etc.  Filed OPINION # 44113-deft. Antonio Flores' motion to limit the Govt.'s introduction of certain evidence at trial, etc is dispose |

A

| DATE                | PROCEEDINGS                                                                                                                                                                                            |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| -13-76              | A.FLORES-Filed Speedy Trial Waiver.  A.Flores-Filed notice of motion & affidavit for dismissal of                                                                                                      |
| -10-76              | A Flores-Filed notice of motion & arrivate                                                                                                                                                             |
| 4-19-76             | A.Flores- Filed Govt's Memorandum of                                                                                                                                                                   |
| n 11. 70            | of events prior to sept. 5, 1776. Motion deniedafter                                                                                                                                                   |
| 04-14-40            |                                                                                                                                                                                                        |
| 54-20-76            | #13/16 Memo End on motion of 4/16/76. Motion denied after                                                                                                                                              |
| 14-20-76            | oral argument. So Ordered. Bolleat, J. war at the trial.                                                                                                                                               |
| 4-22-76             | Piled Cout. s affect. re: Withesses will beat the deft. A. Flores                                                                                                                                      |
| 14-22-76<br>1-23-76 | Filed true copy of the series having been filed together with a                                                                                                                                        |
|                     | motion for a stay is denied. Clerk mm pro-se                                                                                                                                                           |
| 04-28-76            | Filed Govt's motion re; stay trial of the cost                                                                                                                                                         |
| 04-28-76            | The state of appeal from a pre-trial Utal                                                                                                                                                              |
| 04-20-70            | decision, rendered by Judge bollets the court wiened as excluded                                                                                                                                       |
|                     | by an Extradition Treaty between sought to introduce by way of                                                                                                                                         |
|                     | a motion filed with the aloresaid court on                                                                                                                                                             |
| 02 76               | Filed memo-end, on motion docketed 4-28-76-Morion granted after                                                                                                                                        |
| 05-03-76            | argument and after to oppositions the                                                                                                                                                                  |
|                     | 6-2-76. Bonsal, J. m/n Filed Govt, s memo, of law re: opposition to deft. Rlores' motion                                                                                                               |
|                     |                                                                                                                                                                                                        |
| 04-04-76            | to limit evidence etc.                                                                                                                                                                                 |
| 04-04-76            | Filed transcript of record of proceedings, dated 4-22-76.                                                                                                                                              |
| 04-04-76            | ro limit evidence, etc.  Filed transcript of record of proceedings, dated 4-22-76.  Filed transcript of record of proceedings, dated 4-19-76.  Filed transcript of record on appeal has been certified |
| 04-04-76            | Filed transcript of record of proceedings, dated 4-22-76. Filed transcript of record of proceedings, dated 4-19-76. Filed transcript of record of proceedings, dated 4-19-76.                          |
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UNITED STATES DESTRICT COURT SOUTH AN DESERTED OF MEN YORK UMITED STATES OF APERICA. -v-- ANTONIO FLORES, JOHN MICHOTH MALEN SAMIANA · LILLIAN SERTAVA INDICTERT ARATH MATERIA. DUANUAD HARL, a/k/o "LE FRISE" 73 Cr. / THE WIO QUINDRES, JI. SEH MERRO, . JOAN CARDON, A TIMEN SEGURA, COLORGE ALVAREZ. A JOHN FOR, a/k/a ROBER BU BUIS, ROBERT FACTIONZ, FILIX OLIVIE, Defendants.

The Grand Jury charges:

1. From on or about the lat day of January, 1968, and continuously thereafter up to and including the 30th day of April, 1971, in the Southern District of New York, ANTONIO FLORES, JOSEPH LUCAROTTI, RALPH SANTANA, LILLIAN SANTANA, DELIA BURGOS, a/k/a "DEE", FELIX OLIVIE, HERMAN RIVERA, JEAN BAPTISTE CROCE, a/k/a JEAN BATI, HERMAND PARI, a/k/a "LE PRICE", HORACIO QUINDRES, JOSEPH MARRO, JEAN CARDON, ANTHONY SEGURA, GEORGE ALVAREZ, JOHN DOE, a/k/a MOGER OU BUIS, ROBERT MARTINEZ, the defendants, and JEAN DIEUPART, a/k/a JEANNOT, JEAN MARIOLE, JAQUES BEC, JEAN PIERRE BUFFAT, ETIENDE MOSCA, a/k/a "PIERROT," FERNAND CRUTTARD, FRANCOISE BIZARD, MARCELLA ASFEZ named herein as co-conspirators and not defendants, and others to the Cread Jury known and unknown, unlawfully,

JH:ko

wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 173 and 174 of Title 21, United States Code.

- defendants unlawfully, wilfully and knowingly would receive, conceal, buy, sell and facilitate the transportation, concealment and sale of a quantity of narcotic drugs, the exact amount and nature thereof being to the Grand Jury unknown, after the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the said narcotic drugs had been imported and brought into the United States contrary to law, knowing that the builted States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.
- 3. It was further a part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would fraudulently import and bring narcotic drugs into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

#### OVERT ACTS

retort . 7

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

- 1. On or about August 5, 1968, LILLIAN SANIANA arrived in the vicinity of the Bronx Park Motel, 2500 Crotona Avenue, Bronx, New York.
- 2. On or about January 12, 1969 LILLIAN SANTANA and DELIA BURGOS, a/k/a "DEE" arrived at the Commodore Hotel, New York, New York.
- 3. During May 1969 ANTONIO FLORES arrived in the vicinity of the New York Hilton Hotel, New York, New York with \$150,000.00.

Miert.

- 4. During July 1969 ANTHONY SEGURA left the garage of the Edison Hotel, New York, New York, driving a car containing 27 kilograms of heroin.
- 5. During July 1969 ANTHONY SEGURA arrived at the New York Hilton Hotel, New York, New York with approximately \$200,000.00.
- 6. During July 1969 ANTHONY SEGURA arrived in the vincinity of Madison Square Garden, New York, New York with approximately 100,000.00.
- 7. During September 1969 ANTHONY SEGURA entered St. Patricks Cathedral with approximately \$150,000.00.
- 8. During October 1969 ANTHONY SEGURA arrived at the New York Hilton Hotel with approximately \$120,000.00.
- 9. During November 1969 ROBERT HARTINEZ arrived in the vicinity of the New York Hilton Hotel, New York, New York with approximately \$120,000.00.
- of the New York Hilton Hotel, New York, New York, ANTHONY SEGURA received the shipping papers and parking receipt for a car containing 93 kilograms of heroin.
- 11. On or about April 27, 1971 ETIENNE MOSCA left the Abbey Victoria Hotel, New York, New York with a partial payment of approximately \$300,000.00 of \$981,000.00 due for delivery of the 93 kilograms of herein.

(Title 21, United States Code, Sections 173 and 174)

#### SECOND COUNT

The Grand Jury further charges:

From in or about March 1969 through July 1969 in the Southern District of New York, HOMACIO QUINONES, the Jil:art

and attempt to introduce into or upon the grounds of a Federal penal and correctional institution, to wit, Federal Detention Headquarters 427 West Street, New York, New York, and take and attempt to take and send therefrom letters and other communications contrary to rules and regulations promulgated by the Attorney General, to wit, Title 28, Code of Federal Regulations Section 6.1.

(Title 18, United States Code, Section 1791)

FOREMAN

WHITTEY MORTH SEYMOUR, Jr. United States Attorney

lished and put into renewed operation, so soon as Your Excellency, in acknowledging receipt of the present Note, declares in the name of your Government, that your Government is reciprocally in agreement with its contents.

I take this opportunity to renew to Your Excellency the assurances

of my highest consideration.

THE DURE OF ALMODÓVAR DEL RIO.

His Excellency, BELLAMY STORER,

Minister Plenipotentiary of the United States of North America.

MADRID, November 20, 1992.

Excremency:—I have the honor to acknowledge the receipt of Your Excellency's esteemed Note of the 18th. November 1922, by which I am informed that His Majesty the King has ordered that the Agreement between Spain and the United States, signed at Washington the 6th. and 15th. of July 1895, granting reciprocal privileges of Copyright, be re-established and put into renewed operation, so soon as I am authorized to declare that the Government of the United States is in accord with this intention.

It is my profound pleasure, in the name of the Government of the United States, to assure Your Excellency that the contents of Your Excellency's Note above referred to, taken in connection with and referring to as it does to my previous Note of the 20th. January 1002, on this subject, in the view of the Government of the United States, restores completely and puts again into full reciprocal force the

Agreement of Washington hereinbefore described.

I take this occasion to renew to Your Excellency the assurances of my highest consideration.

BELLAMY STORER.

His Excellency, The MINISTER OF STATE.

Note: The Proclamation, in reference to copyrights, referred to in the fore-going correspondence, is dated July 10, 1805. (See page 1687.)

#### 1904.

#### EXTRADITION TREATY AND PROTOCOL.

Concluded June 15, 1904; protocol signed August 13, 1967; ratification advised by the Senate January 16, 1908; ratified by the President February 5, 1908; ratifications exchanged April 6, 1908; proclaimed May 21, 1908.

#### ABTICLES.

- I. Delivery of accused.
- II. Extraditable offenses.
- III. Political offenses.
- IV. Offense for which to be tried.
- V. Limitations.
- VI. Deferring extradition.
- VII. Claimed by other countries.
- VIII. Nondelivery of citizens.
- IX. Expenses.

- Property in possession of accused.
- XI. Procedure.
- XII. Provisional detention.
- NIII. Assistance of legal conters.
- XIV. Effect; duration; ratification. Protocol; amendments to Articles III and IV.

BEST COPY AVAILABLE

#### ARTICLE I.

It is agreed that the Government of the United States and the Government of Spain shall, upon mutual requisition duly made as herein provided deliver up to justice any person who may be charged with, or may have been convicted of any of the crimes specified in Article II of this Convention committed within the jurisdiction of one of the Contracting Parties while said person was actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other, provided that such surrender shall take place only upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed.

#### ARTICLE II.

Persons shall be delivered up according to the provisions of this Convention, who shall have been charged with or convicted of any of the following crimes:

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, manslaughter, when voluntary; poisoning

or infanticide.

2. The attempt to commit murder. 3. Rape, abortion, carnal knowledge of children under the age of twelve years.

4. Bigamy.

5. Arson. 6. Willful and unlawful destruction or obstruction of railroads, which endangers human life.

7. Crimes committed at sea:

(a) Piracy, as commonly known and defined by the laws of Nations, or by Statute;
(b) Wrongfully sinking or destroying a vessel at sea or attempt-

ing to do so; (c) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the Captain or Commander of such vessel, or by fraud or violence taking possession of such vessel;

(d) Assault on board ships upon the high seas with intent to do bodily harm.

8. Burglary, defined to be the act of breaking into and entering the house of another in the night time with intent to commit a felony therein:

9. The act of breaking into and entering into the offices of the Government and public authorities, or the offices of banks, banking houses, saving banks, trust companies, insurance companies, or other buildings not dwellings with intent to commit a felony therein.

10. Robbery, defined to be the act of feloniously and forcibly taking from the person of another, goods or money by violence or by putting him in fear.

11. Forgery or the utterance of forged papers.

12. The forgery or falsification of the official acts of the Government or public authority, including Courts of Justice, or the uttering

or fraudulent use of any of the same.

13. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, created by National. State, Provincial, Territorial, Local or Municipal Governments, banknotes or other instruments of public credit, counterfeit seals, stamps, dies and marks of State or public administrations, and the utterance, circulation or fraudulent use of the above mentioned objects.

14. Embezzlement or criminal malversation committed within the jurisdiction of one or the other party by public officers or depositaries, where the amount embezzled exceeds two hundred dollars (or Spanish

15. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offence is punishable by imprisonment or other corporal punishment by the laws of both countries, and where the amount embezzled exceeds two hundred dollars (or Spanish equivalent.)

16. Kidnapping of minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them

or their families, or for any other unlawful end.

17. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more.

18. Obtaining money, valuable securities or other property by false pretences or receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained, where the amount of money or the value of the property so obtained or received exceeds two hundred dollars (or Spanish equivalent.)

19. Perjury or subornation of perjury.

20. Fraud or breach of trust by a bailee, banker, agent, factor trustee, executor, administrator, guardian, director or officer of any Company or Corporation, or by any one in any fiduciary position, where the amount of money or the value of the property misappropriated exceeds two hundred dollars (or Spanish equivalent.)

21. Crimes and offences against the laws of both countries for the

suppression of slavery and slave trading.

22. The extradition is also to take place for participation in any of the aforesaid crimes as an accessory before or after the fact, provided such participation be punishable by imprisonment by the laws of both Contracting Parties.

#### ARTICLE III.

#### [See amended article in Protocol following Treaty.]

The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with such crimes or offences, except in so far as they shall constitute ordinary crimes or offences punishable by the laws of the two Countries; and no person surrendered by or to either of the Contracting Parties in virtue of this convention shall be tried or punished for a political crime or offence, except they be ordinary crimes as above stated, nor for any act connected therewith, committed previously to the extradition. An attempt, whether consummated or not, against the life of the Sovereign or of the Head of any State, or against that of any member of his family, when such attempt comprises the act either of murder or assassination or of poisoning, shall not be considered a political offence, or an act connected with such an offence.

#### ARTICLE IV.

[See amended article in Protocol following Treaty.]

No person shall be tried for any crime or offence other than that for which he was surrendered unless such crime be one of those enumerated in Article II.

#### ARTICLE V.

A fugitive criminal shall not be surrendered under the provisions hereof, when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked.

#### ARTICLE VI.

If a fugitive criminal whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution out on bail or in custody, for a crime or offence committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined, and, until he shall have been set at liberty in due course of law.

#### ARTICLE VII.

If a fugitive criminal claimed by one of the parties hereto, shall be also claimed by one or more powers pursuant to treaty provisions, on account of crimes committed within their jurisdiction, such criminal shall be delivered to that State whose demand is first received.

#### ARTICLE VIII.

Under the stipulations of this Convention, neither of the Contracting Parties shall be bound to deliver up its own citizens or subjects.

#### ARTICLE IX.

The expense of the arrest, detention, examination and transportation of the accused shall be paid by the Government which has preferred the demand for extradition.

#### ARTICLE X.

Everything found in the possession of the fugitive criminal at the time of his arrest, whether being the proceeds of the crime or offence, or which may be material as evidence in making proof of the crime, shall, so far as practicable, according to the laws of either of the Con-

tracting Parties, be delivered up with his person at the time of the surrender. Nevertheless, the rights of a third party with regard to the articles aforesaid, shall be duly respected.

#### ARTICLE XI.

The stipulations of this Convention shall be applicable to all territory wherever situated, belonging to either of the contracting parties or in the occupancy and under the control of either of them, during

such occupancy or control.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the Contracting Parties. In the event of the absence of such Agents from the country or its seat of Government, or where extradition is sought from a colonial possession of Spain or from territory, included in the preceding paragraph, other than the United States, requisition may be made

by superior Consular officers.

It shall be competent for such Diplomatic or superior Consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magicintes of the two Governments shall respectively have power and a chority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the Court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, with such other

evidence or proof as may be deemed competent in the case.

#### ARTICLE XII.

If when a person accused shall have been arrested in virtue of the mandate or preliminary warrant of arrest, issued by the competent authority as provided in Article XI hereof, and been brought, before a judge or a magistrate to the end that the evidence of his or her guilt may be heard and examined as herein before provided, it shall appear that the mandate or preliminary warrant of arrest has been issued in parsuance of a request or declaration received by telegraph from the Government asking for the extradition, it shall be competent for the judge or magistrate at his discretion to hold the accused for a period not exceeding two months, so that the demanding Government may have opportunity to last before such judge or magistrate legal exidence of the guilt of the accused, and if at the expiration of said period of two months, such legal evidence shall not have been produced before such judge or magistrate, the person arrested shall be released,

provided that the examination of the charges preferred against such accused person shall not be actually going on.

#### ARTICLE XIII.

In every case of a request made by either of the two Contracting Parties for the arrest, detention or extradition of fugitive criminals, the legal officers or fiscal ministry of the country where the proceedings of extradition are had, shall assist the officers of the Government demanding the extradition before the respective judges and magistrates, by every legal means within their or its power; and no claim whatever for compensation for any of the services so rendered shall be made against the Government demanding the extradition, provided however, that any officer or officers of the surrendering Government so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the Government demanding the extradition the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are offic vs.

#### ARTICLE XIV.

This Convention shall take effect from the day of the exchange of the ratifications thereof; but either Contracting Party may at any time terminate the same on giving to the other six months notice of its intention to do so.

The ratifications of the present Treaty shall be exchanged at Madrid as soon as possible.

In witness whereof the respective Plenipotentiaries have signed

the above articles, and have hereunto affixed their seals.

Done in duplicate, at the city of Madrid, this fifteenth day of June

one thousand nine hundred and four.

[SEAL.]

[SEAL.]

FAUSTINO

ARTHUR S. HARDY.
FAUSTINO RODRIGUES SAN PEDRO.

#### PROTOCOL.

The Undersigned. His Excellency, Wi liam Miller Collier. Envoy Extraordinary and Minister Plenipotentiary of the United States of America to His Catholic Majesty, and His Excellency Don Manuel Allendesalazar y Muñoz de Salazar, Minister of State of His Catholic Majesty, duly authorized for the purpose, have agreed upon the following:

Articles III and IV of the Treaty of extradition between the United States and Spain signed at Madrid on June 15th, 1904, are hereby amended so as to read as follows:

"Arricle III. The provisions of this Convention shall not import claim of extradition for any crime or offence of a political character, nor for acts connected with such crimes or offences; and no person surrendered by or to either of the Contracting Parties in virtue of this Convention shall be tried or punished for a political crime or

offence. When the offence charged comprises the act either of murders or assassination or of poisoning, either consummated or attempted, the fact that the offence was committed or attempted against the life of the Sovereign or Head of a foreign State or against the life of any member of his family, shall not be deemed sufficient to sustain that such a crime or offence was of a political character, or was an act connected with crimes or offences of a political character."

"ARTICLE IV. No person shall be tried for any crime or offence

other than that for which he was surrendered."

The above mentioned treaty, as a mended by this protocol, is to be submitted for approval in the manner required by the laws of the two nations and the ratifications shall be exchanged at Madrid as soon as possible.

In faith whereof this protocol is signed in two originals, each one in the two languages, in San Sabastian on the 13th of August 1907.

WM. MILLER COLLIER.
MANUEL ALLENDESALAZAR.

#### 1906.

COMMERCIAL AGREEMENT BETWEEN THE UNITED STATES AND STAIN UNDER SECTION 3, TARRES ACT, JULY 24, 1897.

Signed at San Schastian August 1, 1906 and explanatory notes exchanged at Madrid December 20, 1906.

AGREEMENT AS TO RECEPROCAL TARREST CONCESSIONS BETWEEN THE UNITED STATES OF AMERICA AND SPAIN.

The Government of the United States of America and Ants name His Excellency Mr. William Miller Collier, Envoy Extraordinary and Minister Plenipotentiary near His Majesty the King of Spain, and the Government of His Catholic Majesty the King of Spain, and in its name His Excellency M. Pio Gullon é Iglesias, Grand Cross of the Red Eagle of Prussia, of Leopold of Belgium, of St. Olaf of Norway, of St. Stephen of Hungary, etc., etc. Life Senator, Member of the Royal Academy of Political and Moral Sciences, Minister of State, desiring to promote the mutual trade interests of the two countries and the former having proposed to the latter the concession by Spain of the most favored nation treatment (Portugal excepted) in exchange for the tariff treatment which on the part of the United States is considered (if the treatment eccorded to Cuba be excepted) as the most favored nation treatment, that is, that made by the concessions made to various countries in the articles comprehended in Section three of the American tariff:—

It is hereby in behalf of the said two Governments a eed as follows:-

I. The following mentioned products and manufactures of Spain exported from Spain to the United States, shall upon their entrance into the United States be dutiable as follows:—

This agreement will termindte August 7, 1910 on notice given by the United States.

### AUTRICHE, BELGIQUE, BRÉSIL, GRANDE-BRETAGNE ET IRLANDE DU NORD, BULGARIE, etc.

Convention de 1936 pour la répression du trafic illicite des drogues nuisibles, et protocole de signature. Signés à Genève, le 26 juin 1936.

Textes officiels en français et en anglais. Cette convention a été enregistrée par le Secrétariat, conformément à son article 22, le 26 octobre 1939, date de son entrée en vigueur.

# AUSTRIA, BELGIUM, BRAZIL, GREAT BRITAIN AND NORTHERN IRELAND, BULGARIA, etc.

Convention of 1936 for the Suppression of the Illicit Traffic in Dangerous Drugs, and Protocol of Signature. Signed at Geneva, June 26th, 1936.

Official texts in French and English. This Convention was registered with the Secretariat, in accordance with its Article 22, on October 26th, 1939, the date of its entry into force.

No. 4648. — CONVENTION 1 OF 1936 FOR THE SUPPRESSION OF THE ILLICIT TRAFFIC IN DANGEROUS DRUGS. SIGNED AT GENEVA, JUNE 26TH, 1936.

The Federal President of Austria; His Majesty the King of the Belgians; the President of the Republic of the United States of Brazil; His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India; His Majesty the King of the Bulgarians; the President of the National Government of the Republic of China; the President of the Republic of Colombia; the President of the Republic of Colombia; the President of the Republic of Colombia; the President of the King of Denmark and Iceland; His Majesty the King of Egypt; the Official entrusted with the Supreme Power of the Republic of Ecuador; the President of the Spanish Republic; the President of the Republic of Estonia; the President of the French Republic; His Majesty the King of the Hellenes; the President of the Republic of Honduras; His Serene Highness the Regent of the Kingdom of Hungary; His Majesty the Emperor of Japan; the President of the United States of Mexico; His Serene Highness the Prince of Monaco; the President of the Republic of Poland; the President of the Netherlands; the President of the Republic; His Majesty the King of Roumania; the Swiss Federal Council; the President of the Celchoslovak Republic; the Central Executive Committee of the Union of Soviet Socialist Republics; 1 "President of the Republic of The Republic of Uruguay; the President of the United States of Venezuela,

Having resolved, on the one hand, to strengthen the measures intended to penalise offences contrary to the provisions of the International Opium Convention<sup>2</sup> signed at The Hague on

|        | INDIA                                      |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | August 4th, 1937.                   |
|--------|--------------------------------------------|---------|-------------|-----------|------------------|-----------------|------------|------------------|---------|------------|------------|-----|------|----|----------|------|----------|------|-------------------------------------|
|        | CHINA                                      |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | October 21st, 1937.                 |
|        | BELGIUM .                                  |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | November 27th, 1937.                |
|        | GREECE                                     |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | February 16th, 1938.                |
|        | ROUMANIA.                                  |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | June 28th, 1938.                    |
|        | BRAZIL                                     |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | July 2nd, 1938.                     |
|        | CANADA .                                   |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | September 27th, 1938.               |
|        | FRANCE                                     |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      | . January 16th, 1940.               |
|        |                                            |         |             |           |                  |                 |            |                  |         |            |            |     |      |    |          |      |          |      |                                     |
|        | The Frenchions as regarderies placed       | h (     | its         | cr<br>C   | nm               | en              | ics        | do               | es<br>P | no         | t a        | 155 | um   | ic | an       | y    | ot       | olig | a-                                  |
|        | The Frenchions as rega                     | h (     | its         | cr<br>s C | nm<br>old        | oni             | ics<br>and | do<br>or<br>dat  | es<br>P | not        | ect        | lor | ate  | 08 | or       | th   | ot       | Te   | a-<br>rri-                          |
| Access | The Frenctions as regatories placed EGYPT  | h (     | its         | cr<br>s C | nm<br>old        | oni             | ics<br>and | do<br>or<br>dat  | es<br>P | not        | ect        | lor | ate  | 08 | or       | th   | ot       | Te   | a-<br>rri-                          |
| Access | The Frenchions as regarderies placed EGYPT | h Cords | its<br>ide  | cris C    | nm<br>lole<br>ts | en<br>oni       | ics<br>and | doe or dat       | es<br>P | not<br>rot | t a<br>ect | lor | ate  |    | or       | th . | ot<br>ne | Te   | a-<br>rri-                          |
| Access | The Frenctions as regatories placed EGYPT  | h Cords | its<br>iden | r i       | nm<br>cold<br>ts | en<br>oni<br>ma | ics<br>and | dod<br>or<br>dat | es P    | not        | t a<br>ect | lor | ate. |    | er<br>or | th . | ot .     | Te   | a-<br>rri-<br>. January 29th, 1940. |

\*Vol. VIII, pages 187, 236 and following; Vol. XI, page 415; Vol. XV, page 311; Vol. XIX, page 283; Vol. XXIV, page 163; Vol. XXXI, page 245; Vol. XXXV, page 299; Vol. XXXIX, page 107; Vol. LIX, page 346; Vol. CIV, page 495; Vol. CVII, page 461; Vol. CXVII, page 48; Vol. CXXXVIII, page 416; and Vol. CLXXII, page 396, of this Series.

January 23rd, 1912, the Geneva Convention of February 19th, 1925, and the Convention of February 19th, 1925, and 1925, on July 13th, 1931, and, on the other hand, to combat by the methods most effective in the present circumstances the illicit traffic in the drugs and substances covered by the above

Have appointed as their Plenipotentiaries:

#### THE FEDERAL PRESIDENT OF AUSTRIA :

M. Emerich Perugal, Permanent Representative to the League of Nations, Envoy

Extraordinary and Minister Plenipotentiary;
Dr. Bruno Schultz, former Vice-President of the Vienna Police, Representative of Austria on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

#### HIS MAJESTY THE KING OF THE BELGIANS:

M. Maurice Bourquin, Legal Adviser of the Ministry of Foreign Affairs and External Trade, Professor at the University of Geneva.

#### THE PRESIDENT OF THE REPUBLIC OF THE UNITED STATES OF BRAZIL:

M. Jorge LATOUR, Secretary of Legation.

HIS MAJESTY THE KING OF GREAT BRITAIN, IRELAND AND THE BRITISH DOMINIONS BEYOND THE SEAS. EMPEROR OF INDIA:

FOR GREAT BRITAIN AND NORTHERN IRELAND AND ALL PARTS OF THE BRITISH EMPIRE WHICH ARE NOT SEPARATE MEMBERS OF THE LEAGUE OF NATIONS :

Oscar Follett Dowson, Esq., C.B.E., Legal Adviser to the Home Office;
Major William Hewett Coles, D.S.O., Representative of the United Kingdom on the
Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

#### FOR THE DOMINION OF CANADA:

Colonel C. H. L. SHARMAN, C.M.G., C.B.E., Chief of the Narcotic Division of the Department of Pensions and National Health, Representative of Canada on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

#### FOR INDIA:

Gordon Sidey HARDY, Esq., C.I.E., I.C.S., Vice-Chairman of the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

#### HIS MAJESTY THE KING OF THE BULGARIANS:

M. Nicolas Momichiloff, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.

<sup>&</sup>lt;sup>1</sup> Vol. LXXXI, page 317; Vol. LXXXVIII, page 390; Vol. XCII, page 409; Vol. XCVI, page 204; Vol. C, page 249; Vol. CIV, page 516; Vol. CVII, page 525; Vol. CXI, page 411; Vol. CXVII, page 290; Vol. CXXII, page 355; Vol. CXXXIV, page 407; Vol. CLVI, page 205; Vol. CLX, page 348; Vol. CLXVIII, page 233; Vol. CXCIII, page 269; and Vol. CXCVII, page 300, of this Series.

<sup>&</sup>lt;sup>1</sup> Vol. CXXXIX, page 301; Vol. CXLVII, page 361; Vol. CLII, page 344; Vol. CLVI, page 268; Vol. CLX, page 419; Vol. CLXIV, page 407; Vol. CLXVIII, page 234; Vol. CLXXII, page 420; Vol. CLXXXI, page 308; Vol. CLXXXV, page 411; Vol. CLXXXIX, page 483; and Vol. CXCVII, page 340, of this Series.

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- THE PRESIDENT OF THE NATIONAL GOVERNMENT OF THE REPUBLIC OF CHINA:
  - Dr. Hoo Chi-Tsai, Director of the Permanent Office of the Delegation to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.
- THE PRESIDENT OF THE REPUBLIC OF COLOMBIA:
  - M. Rafael Guizado, Secretary of the Permanent Delegation to the League of Nations.
- THE PRESIDENT OF THE REPUBLIC OF CUBA:
  - M. Guillermo de Blanck, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.
- HIS MAJESTY THE KING OF DENMARK AND ICELAND:
  - M. William Borberg, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.
- HIS MAJESTY THE KING OF EGYPT:
  - M. Edgar Gorra, Koyal Adviser, "Directeur du contentieux de l'Etat", Alexandria.
- THE OFFICIAL ENTRUSTED WITH THE SUPREME POWER OF THE REPUBLIC OF ECUADOR:
  - M. Alejandro Gastel Concha, Secretary of the Permanent Delegation to the League of Nations. Consul-General in Geneva.
- THE PRESIDENT OF THE SPANISH REPUBLIC:
  - M. Julio CASARES Y SANCHEZ, Head of Section at the Ministry of Foreign Affairs, Representative of Spain on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.
- THE PRESIDENT OF THE REPUBLIC OF ESTONIA:
  - M. Johannes Ködar, Permanent Delegate a.i. to the League of Nations.
- THE PRESIDENT OF THE FRENCH REPUBLIC:
  - M. VERCHÈRE DE REFFYE, Minister Plenipotentiary, "Sous-Directeur des chancelleries et du contentieux" at the Ministry of Foreign Affairs; M. Gaston Bourgois, Consul-General of France.
- HIS MAJESTY THE KING OF THE HELLENES:
  - M. Raoul BIBICA-ROSETTI, Permanent Delegate to the League of Nations, Envoy
  - Extraordinary and Minister Plenipotentiary;
    M. Alexandre Contoumas, First Secretary of the Permanent Delegation to the League of Nations.
- THE PRESIDENT OF THE REPUBLIC OF HONDURAS:
  - Dr. Julian Lopez Pineda, Permanent Delegate to the League of Nations, Chargé d'Affaires in Paris.
- HIS SERENE HIGHMESS THE REGENT OF THE KINGDOM OF HUNGARY:
  - M. László DE VELICS, Chief of the Royal Delegation to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.
- HIS MAJESTY THE EMPEROR OF JAPAN:
  - M. Massa-aki Hotta, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council.
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THE PRESIDENT OF THE UNITED STATES OF MEXICO:

M. Manuel Tello, Secretary of the Permanent Delegation to the League of Nations, First Secretary of the Mexican Foreign Service, Representative of Mexico on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

HIS SERENE HIGHNESS THE PRINCE OF MONACO:

M. Xavier-John Raisin, Consul-General at Geneva.

THE PRESIDENT OF THE REPUBLIC OF PANAMA:

Dr. Ernesto HOFFMANN, Permanent Delegate to the League of Nations.

HER MAJESTY THE QUEEN OF THE NETHERLANDS:

M. J. H. Delgorge, Adviser of the Netherlands Government on international opium questions, Netherlands Representative on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs; Jonkheer G. Beelaerts van Blokland, Assistant Editor to the Ministry of Foreign

Affairs.

THE PRESIDENT OF THE REPUBLIC OF POLAND:

Dr. Witold Спорако, Former Minister of Public Health, Chairman of the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

THE PRESIDENT OF THE PORTUGUESE REPUBLIC!

Dr. Augusto De Vasconcellos, Permanent Delegate to the League of Nations, Minister Plenipotentiary; Professor José Caeiro da Matta, Rector of the University of Lisbon.

HIS MAJESTY THE KING OF ROUMANIA:

M. Constantin Antoniade, Envoy Extraordinary and Minister Plenipotentiary to the League of Nations.

THE SWISS FEDERAL COUNCIL:

M. Camille Gorgé, Counsellor of Legation, Chief of the League of Nations Section at the Federal Political Department.

THE PRESIDENT OF THE CZECHOSLOVAK REPUBLIC:

Dr. Antonín Koukal, Adviser at the Ministry of Justice.

THE CENTRAL EXECUTIVE COMMITTEE OF THE UNION OF SOVIET SOCIALIST REPUBLICS:

M. Georges Lachkevitch, Legal Adviser at the People's Commissariat for Foreign Affairs.

THE PRESIDENT OF THE REPUBLIC OF URUGUAY:

M. Victor Benavides, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council;

Dr. Alfredo DE CASTRO, Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians and to Her Majesty the Queen of the Netherlands, Representative of Uruguay on the Advisory Committee on Traffic in Opium and Other Dangerous Drugs.

THE PRESIDENT OF THE UNITED STATES OF VENEZUELA:

M. Manuel Arocha, Permanent Delegate to the League of Nations, Envoy Extraordinary and Minister Plenipotentiary.

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Who, having produced their full powers, found in good and due form, have agreed on the following provisions:

#### Article I.

1. In the present Convention, "narcotic drugs" shall be deemed to mean the drugs and sub-tances to which the provisions of the Hague Convention of January 23rd, 1912, and the Geneva Conventions of February 19th, 1925, and July 13th, 1931, are now or hereafter may be

applicable.

2. For the purposes of the present Convention, the word "extraction" connotes an operation whereby a narcotic usug is separated from the substance or compound of which it forms part, without involving any actual manufacture or conversion properly so called. This definition of the word "extraction" is not intended to include the processes whereby raw opium is obtained from the opium poppy, these being covered by the term " production "

#### Article 2.

Each of the High Contracting Parties agrees to make the necessary legislative provisions for severely punishing, particularly by imprisonment or other penalties of deprivation of liberty, the following acts-namely

- (a) The manufacture, conversion, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokage, despatch, despatch in transit, transport, importation and exportation of narcotic drugs, contrary to the provisions of the said Conventions;
  - (b) Intentional participation in the offences specified in this Article;
  - (c) Conspiracy to commit any of the above-mentioned offences;
- (d) Attempts, and subject to the conditions prescribed by national law, preparatory

#### Article 3.

The High Contracting Parties who possess extra-territorial jurisdiction in the territory of another High Contracting Party undertake to enact the necessary legislative provisions for punishing such of their nationals as are guilty within that territory of any offence specified in Article 2 at least as severely as if the offence had been committed in their own territory.

#### Article 4.

Each of the acts specified in Article 2 shall, if committed in different countries, be considered as a distinct offence.

#### Article 5.

The High Contracting Parties, whose national law regulates cultivation, gathering and production with a view to obtaining narcotic drugs, shall likewise make severely punishable contraventions thereof.

#### Article 6.

In countries where the principle of the international recognition of previous convictions is recognised, foreign convictions for the offences referred to in Article 2 shall, subject to the conditions prescribed by the domestic law, be recognised for the purpose of establishing habitual criminality. Article 7.

1. In countries where the principle of the extradition of nationals is not recognised, nationals who have returned to the territory of their own country, after the commission abroad of any of the offences referred to in Article 2, shall be prosecuted and punished in the same manner as if 1939

the offence had been committed in the the said territory, even in a case where the offender has acquired his nationality after the commission of the offence.

2. This provision does not apply if, in a similar case, the extradition of a foreigner cannot be granted.

#### Article 8.

Foreigners who are in the territory of a High Contracting Party and who have committed abroad any of the offences set out in Article 2 shall be prosecuted and punished as though the oftence had been committed in that territory if the following conditions are realised—namely, that :

(a) Extradition has been requested and could not be granted for a reason inde-

pendent of the offence itself; (b) The law of the country of refuge considers prosecution for offences committed abroad by foreigners admissible as a general rule.

#### Article 9.

1. The offences set out in Article 2 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High

2. The High Contracting Parties who do not make extradition conditional on the existence Contracting Parties. of a treaty or on reciprocity shall as between themselves recognise the offences referred to above

3. Extradition shall be granted in conformity with the law of the country to which application is made.

4. The High Contracting Party to whom application for extradition is made shall, in all cases, have the right to refuse to effect the arrest or to grant the extradition of a fugitive offender if his competent authorities consider that the offence of which the fugitive offender is accused or convicted is not sufficiently serious.

Article 10. Any narcotic drugs as well as any substances and instruments intended for the commission of any of the offences referred to in Article 2 shall be liable to seizure and confiscation.

#### Article II.

1. Each of the High Contracting Parties shall set up, within the framework of its domestic law, a central office for the supervision and co-ordination of all operations necessary to prevent the offences specified in Article 2, and for ensuring that steps are taken to prosecute persons guilty of such offences.

2. This central office:

(a) Shall be in close contact with other official institutions or bodies dealing with

(b) Shall centralise all information of a nature to facilitate the investigation and narcotic drugs; prevention of the offences specified in Article 2;

(c) Shall be in close contact with and may correspond direct with the central offices

3. Where the Government of a High Contracting Party is federal in character, or where the executive authority of its Government is distributed between central and local Governments, the supervision and co-ordination specified in paragraph I and the execution of the functions specified in (a) and (b) of paragraph 2 shall be carried out in conformity with the constitutional or administrative system thereof.

4. Where the present Convention has been applied to any territory by virtue of Article 18, the requirements of the present Article may be carried out by means of a central office set up in

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or for that territory acting in conjunction, if necessary, with the central office in the metropolitan territory concerned.

5. The powers and the functions of the central office may be delegated to the special administration referred to in Article 15 of the Convention for limiting the Manufacture and regulating the Distribution of Narcotic Drugs of 1931.

#### Article 12.

1. The central office shall co-operate with the central offices of foreign countries to the greatest extent possible, in order to facilitate the prevention and punishment of the offences

specified in Article 2. 2. The office shall, so far as it thinks expedient, communicate to the central office of any

country which may be concerned :

(a) Particulars which would make it possible to carry out any investigations or operations relating to any transactions in progress or proposed;

(b) Any particulars which it has been able to secure regarding the identity and the

description of traffickers with a view to supervising their movements;

### (c) Discoveries of secret factories of narcotic drugs.

#### Article 13.

The transmission of letters of request relating to the offences referred to in Article 2 shall be effected:

(a) Preferably by direct communication between the competent authorities of

each country or through the central offices, or

(b) By direct correspondence between the Ministers of Justice of the two countries or by direct communication from another competent authority of the country making the request to the Minister of Justice of the country to which the request is made, or

(c) Through the diplomatic or consular representative of the country making the request in the country to which the request is made. For this purpose, the letters of request shall be sent by such representative to the authority designated by the country to which the request is made.

2. Each High Contracting Party may, by communication to the other High Contracting Parties, express its desire that letters of request to be executed within its territory should be sent to it through the diplomatic channel.

In case (c) of paragraph 1, a copy of the letter of request shall at the same time be sent by the diplomatic or consular representative of the country making the request to the Minister for Foreign Affairs of the country to which application is made.

4. Unless otherwise agreed, the letter of request shall be drawn up in the language of the authority to which request is made or in a language agreed upon by the two countries concerned.

5. Each High Contracting Party shall notify to each of the other High Contracting Parties the method, or methods, of transmission mentioned above which it will recognise for the letters of request of the latter High Contracting Party.

Until such notification is made by a High Contracting Party, its existing procedure in regard to letters of request shall remain in force.

7. The execution of letters of request shall not be subject to payment of taxes or expenses other than the expenses of experts.

8. Nothing in the present Article shall be construed as an undertaking on the part of the High Contracting Parties to adopt in criminal matters any form or methods of proof contrary to their laws or to execute letters of request otherwise than within the limits of their laws.

#### Article 14.

The participation of a High Contracting Party in the present Convention shall not be interpreted as affecting that Party's attitude on the general question of criminal jurisdiction as a question of international law.

#### Article 15.

The present Convention does not affect the principle that the offences referred to in Articles 2 and 5 shall in each country be defined, prosecuted and punished in conformity with the general fules of its domestic law.

#### Article 16.

The High Contracting Parties shall communicate to one another through the Secretary-General of the League of Nations the laws and regulations promulgated in order to give effect to the present Convention, and also an annual report on the working of the Convention in their territories.

Article 17. If there should arise between the High Contracting Parties a dispute of any kind relating to

the interpretation or application of the present Convention, and if such dispute cannot be satisfactorily settled by diplomacy, it shall be settled in accordance with any applicable agreements

in force between the Parties providing for the settlement of international disputes.

In case there is no such agreement in force between the Parties, the dispute shall be referred to arbitration or judicial settlement. In the absence of agreement on the choice of another tribunal, the dispute shall, at the request of any one of the Parties, be referred to the Permanent Court of International Justice, if all the Parties to the dispute are Parties to the Protocol of December 16th, 1920, relating to the Statute of that Court, and, if any of the Parties to the dispute is not a Party to the Protocol of December 16th, 1920, to an arbitral tribunal constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

#### Article 18.

- 1. Any High Contracting Party may, at the time of signature, ratification or accession, declare that, in accepting the present Convention, he does not assume any obligation in respect of all or any of his colonies, protectorates, overseas territories or territories under suzerainty or mandate, and the present Convention shall not apply to any territories named in such declaration.
- 2. Any High Contracting Party may give notice to the Secretary-General of the League of Nations at any time subsequently that he declares that the Convention shall apply to all or any of his territories which have been made the subject of a declaration under the preceding paragraph, and the Convention shall apply to all the territories named in such notice ninety days after its receipt by the Secretary-General of the League of Nations.
- 3. Any High Contracting Party may, at any time after the expiration of the period of five years mentioned in Article 21, declare that he desires that the present Convention shall cease to apply to all or any of his colonies, protectorates and overseas territories or territories under

Vol. VI, page 379; Vol. XI, page 405; Vol. XV, page 305; Vol. XXIV, page 153; Vol. XXVII, page 417; Vol. XXXIX, page 165; Vol. XLV, page 96; Vol. L, page 159; Vol. LIV, page 387; Vol. LNIN, page 70; Vol. LXXII, page 452; Vol. LXXVIII, page 435; Vol. LXXVIII, page 272; Vol. XCII, page 362; Vol. XCVI, page 180; Vol. C, page 153; Vol. CIV, page 492; Vol. CVII, page 461; Vol. CXI, page 402; Vol. CXVII, page 46; Vol. CXXVI, page 430; Vol. CXXX, page 440; Vol. CXXXIV, page 392; Vol. CXLVII, page 318; Vol. CLII, page 282; Vol. CLVI, page 176; Vol. CLX, page 325; Vol. CLXIV, page 325; Vol. CLXIV, page 326; Vol. CLXVIII, page 28; Vol. CLXXII, page 388; Vol. CLXXVII, page 382; Vol. CLXXXII, page 346; Vol. CLXXXV, page 370; Vol. CLXXXIX, page 452; Vol. CXCVII, page 402; and Vol. CXCVII, page 283 of this Series.

\*\*Relited and Exercise State Pages.\*\* Vol. 200. 2008.

suzerainty or mandate, and the Convention shall cease to apply to the territories named in such declaration one year after its receipt by the Secretary-General of the League of Nations.

4. The Secretary-General shall communicate to all the Members of the League and to the non-member States mentioned in Article 19 all declarations and notices received in virtue of this Article. Article 19.

The present Convention, of which the French and English texts shall both be equally authoritative, shall bear this day's date, and shall, until December 31st, 1936, be open for signature on behalf of any Member of the League of Nations, or of any non-member State which received an invitation to the Conference which drew up the present Convention, or to which the Council of the League of Nations shall have communicated a copy of the Convention for this purpose.

#### Article 20.

The present Convention shall be ratified. The instruments of ratification shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all Members of the League and to the non-member States referred to in the preceding Article.

#### Article 21.

1. As from Jaunuary 1st, 1937, the present Convention shall be open to accession on behalf of any Member of the League of Nations or any non-member State mentioned in Article 19.

The instruments of accession shall be transmitted to the Secretary-General of the League of Nations, who shall notify their receipt to all the Members of the League and to the non-member States mentioned in that Article. Article 22.

The present Convention shall come into force ninety days after the Secretary-General of the League of Nations has received the ratifications or accessions of ten Members of the League of Nations or non-member States. It shall be registered on that date by the Secretary-General of the League of Nations.

#### Article 23.

Ratifications or accessions received after the deposit of the tenth ratification or accession shall take effect as from the expiration of a period of ninety days from the date of their receipt by the Secretary-General of the League of Nations.

#### Article 24.

1. After the expiration of five years from the date of the coming into force of the present Convention, it may be denounced by an instrument in writing, deposited with the Secretary-General of the League of Nations. The denunciation shall take effect one year after the date of its receipt by the Secretary-General of the League of Nations and shall operate only as regards the Member of the League or non-member State on whose behalf it has been deposited.

2. The Secretary-General shall notify all the Members of the League and the non-member

States mentioned in Article 19 of any denunciations received.

3. If, as a result of simultaneous or successive denunciations, the number of Members of the League and non-member States bound by the present Convention is reduced to less than ten, the Convention shall cease to be in force as from the date on which the last of such denunciations shall take effect in accordance with the provisions of this Article.

#### Article 25.

A request for the revision of the present Convention may at any time be made by any Member of the League of Nations or non-member State bound by this Convention by means of a notice addressed to the Secretary-General of the League of Nations. Such notice shall be communicated by the Secretary-General to the other Members of the League of Nations or non-member States bound by this Convention, and, if endorsed by not less than one-third of them, the High Contracting Parties agree to meet for the purpose of revising the Convention.

En foi de quoi, les plénipotentiaires susmentionnés ont signé la présente convention.

Fait à Genève, le vingt-six juin mil neuf cent trente-six, en un seul exemplaire, qui sera déposé dans les archives du Secrétariat de la Société des Nations et dont les copies certifiées conformes seront remises à tous les Membres de la Société des Nations et aux Etats non membres mentionnés à l'article 19.

In faith whereof the above-mentioned Plenipotentiaries have signed the present Convention.

Done et Geneva, the twenty-sixth day of June, one thousand nine hundred and thirtysix, in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations and certified true copies of which shall be delivered to all the Members of the League and to the non-member States referred to in Article 19.

Autriche :

Austria :

E. PFLUGL Dr Bruno SCHULTZ

Belgique :

Belgium :

En acceptant la présente convention, la Belgique n'entend assumer aucune obligation en ce qui concerne le Congo belge et les territoires du Ruanda-Urundi au sujet desquels elle exerce un mandat au nom de la Société des Nations1.

Maurice Bourquin

Etats-Unis du Brésil :

United States of Brazil:

Jorge LATOUR ad referendum

Grande-Bretagne et Irlande du Nord : ainsi que toutes parties de l'Empire britannique non membres séparés de la Société des Nations

Great Britain and Northern Ireland : and all parts of the British Empire which are not separate Members of the League of Nations

Oscar F. Dowson Wm. H. COLES

Canada:

C. H. L. SHARMAN

Canada:

Inde :

India:

Bulgarie :

G. HARDY

Bulgaria:

N. MOMTCHILOFF

China:

Chine : Colombie :

Hoo Chi-Tsai.

Colombia:

ad referendum

Rafael GUIZADO

Cuba:

Cuba:

G. de BLANCK

Denmark :

Danemark :

William BORBERG

1 Translation by the Secretariat of the League of Nations :

<sup>&</sup>quot;In accepting the present Convention, Belgium does not assume any obligation as regards the Belgian Congo and the Territories of Ruanda-Urundi in respect of which a mandate is being exercised by her on helpelf of the League of Nations." by her on behalf of the League of Nations.

| 1939 . Le                                          | eague of Nations — Treaty Seri         | ies. 31              |
|----------------------------------------------------|----------------------------------------|----------------------|
| Egypte:                                            |                                        | Egypt:               |
| Equateur :                                         | Edgar Gorra                            |                      |
| Espagne:                                           | Alex Gastelů                           | Ecuador:             |
|                                                    | Julio CASARES                          | Spain:               |
| Estome:                                            | J. KODAR                               | Estonia:             |
| France:                                            | P. DE REFFYE                           | France:              |
|                                                    | G. Bourgois                            |                      |
| Grèce:                                             | Raoul BIBICA-ROSETTI                   | Greece :             |
| Honduras:                                          | A. CONTOUMAS                           | Honduras :           |
| Hongrie:                                           | J. LÓPEZ PINEDA.                       |                      |
|                                                    | Sous réserve de ratification<br>VELICS | Hungary:             |
| Japon:                                             | Massa-aki Hotta                        | Japan :              |
| Mexique:                                           |                                        | Mexico:              |
| Monaco:                                            | Manuel Tello.                          | Monaco:              |
| l'anama :                                          | Xavier Raisin.                         |                      |
| Pays-Bas:                                          | referendum : Dr Ernesto HOFFMANN       |                      |
|                                                    | DELGORGE<br>G. BEELAERTS VAN BLOKLAND  | The Netherlands:     |
| Pologne:                                           | Снора́ко                               | Poland:              |
| Portugal:                                          | Augusto DE VASCONCELLOS                | Portugal:            |
| D                                                  | José Caeiro da Matta                   |                      |
| Roumanie:                                          | C. ANTONIADE                           | Roumania :           |
| Suisse:                                            | C. Gorgé                               | Switzerland:         |
| Tchécoslovaquie:                                   |                                        | Czechoslovakia:      |
| Union des Républiques<br>soviétiques socialistes : | Dr Antonín Koukal                      | Union of Soviet      |
|                                                    | G. LACHKEVITCH                         | Socialist Republics: |
| Uruguay:                                           | V. BENAVIDES                           | Uruguay:             |
| Venezuela:                                         | Alfredo DE CASTRO                      | Venezuela :          |
| 0. 4648                                            | ad referendum: AROCHA                  |                      |

#### PROTOCOL OF SIGNATURE.1

When signing the Convention of 1936 for the Suppression of the Illicit Traffic ir. Dangerous Drugs dated this day, the undersigned Plenipotentiaries, in the name of their Governments, declare to have agreed:

- 1. To China making acceptance of the Convention subject to the following reservation as to Article 9:
  - "So long as the consular jurisdiction still enjoyed by the nationals of certain Powers in China is not abolished, the Chinese Government is unable to assume the obligations resulting from Article 9, involving a general undertaking by the Contracting Parties to grant the extradition of foreigners guilty of the offences referred to in that Article."
- 2. That the Netherlands make their acceptance of the Convention subject to the reservation that, according to the basic principles of penal law in the Netherlands, they are able to comply with sub-paragraph (c) of Article 2 only in circumstances where there is a commencement of execution.
- 3. That India makes its acceptance of the Convention subject to the reservation that the said Convention does not apply to the Indian States or to the Shan States (which are part of British India).

|          | INDIA .                                      |         |    |        |           |           |          |                   |          |                   |                |                |    |     |           |          |     |      |     |           | August 4th, 1937.      |
|----------|----------------------------------------------|---------|----|--------|-----------|-----------|----------|-------------------|----------|-------------------|----------------|----------------|----|-----|-----------|----------|-----|------|-----|-----------|------------------------|
|          | CHINA .                                      |         |    |        |           |           |          |                   |          |                   |                |                |    |     |           |          |     |      |     |           | October 21st, 1937.    |
|          | BELGIUM                                      |         |    |        |           |           |          |                   |          |                   |                |                |    |     |           |          |     |      |     |           | November 27th, 1937.   |
|          | GREECE                                       |         |    |        |           |           |          |                   |          |                   |                |                |    |     |           |          |     |      |     |           | February 16th, 1938.   |
|          | ROUMANI                                      | ٨       |    |        |           |           |          |                   |          |                   |                |                |    |     |           |          |     |      |     |           | June 28th, 1938.       |
|          | BRAZIL                                       |         |    |        |           |           |          |                   |          |                   |                |                |    |     |           |          |     |      |     |           | July 2nd, 1938.        |
|          | CANADA                                       |         |    |        |           |           |          |                   |          |                   |                |                |    |     |           |          |     |      |     |           | September 27th, 1918.  |
|          | CANADA                                       |         | ٠. |        |           |           |          |                   |          |                   |                |                |    |     |           | -        |     |      |     |           | pertender aftil, 1930. |
|          | FRANCE The Irr gations a Territoric          | cno     | h  | G      | ove<br>ls | rn<br>its | me       | nt cold           | d<br>oni | ocs               | n              | ot<br>Pr       | as | sun | ne        | a        | n., |      | obl | li-       | January 16th, 1940     |
|          | The Fr                                       | ene     | h  | Gara   | ls u      | its<br>nd | me<br>er | nt<br>colo<br>its | d<br>oni | ocs<br>cs         | or<br>dat      | ot<br>Pr       | as | sun | ne<br>ora | a<br>tes | n;  | or   | th  | li-<br>he | January 16th, 1940     |
| Accessio | The Fr<br>gations a<br>Territorie<br>Egypt . | ene     | h  | Gara   | ls u      | its<br>nd | me<br>er | nt<br>colo<br>its | d<br>oni | ocs<br>cs         | or<br>dat      | ot<br>Pr       | as | sun | ne<br>ora | a<br>tes | n;  | or   | th  | li-<br>he | January 16th, 1940     |
| Accessio | The Fr<br>gations a<br>Territorie<br>EGYPT   | ences i | h  | Garded | la<br>u   | its<br>nd | er .     | nt colo its       | d<br>oni | ocs<br>cs<br>iand | or dat         | ot<br>Pr<br>e. | as | sun | ne<br>ora | a<br>tes |     | or · | th  | li-<br>he | January 16th, 1940.    |
| Accessio | The Fr<br>gations a<br>Territorie<br>Egypt . | cno     | h  | Garded | ls u      | its<br>nd | er .     | its               | d<br>m   | oes<br>iand       | n<br>or<br>dat | ot<br>Pr<br>e. | as | sun | ne<br>ora | a tes    |     |      | th  | li-<br>he | January 16th, 1940     |

En foi de quoi les soussignés ont apposé leur signature au bas du présent protocole.

Fait à Genève, le vingt-six juin mil neuf cent trente-six, en un seul exemplaire, qui sera déposé dans les archives du Secrétariat de la Société des Nations et dont les copies certifiées conformes seront remises à tous les Membres e : la Société des Nations et aux Etats non rambres mentionnés à l'article 19 de la convention.

In faith whereof the undersigned have affixed their signatures to the present Protocol.

Done at Geneva, the twenty-sixth day of June, one thousand nine hundred and thirty-six. in a single copy, which shall remain deposited in the archives of the Secretariat of the League of Nations and certified true copies of which shall be delivered to all the Members of the League of Nations and to the non-member States referred to in Article 19 of the Convention.

Autriche :

322

E. PFLÜGL

Dr Bruno SCHULTZ

Belgique :

Maurice Bourguin

Belgium :

Austria :

Etats-Unis du Brésil :

United States of Brazil:

Jorge LATOUR ad referendum

Grande-Bretagne et Irlande du Nord : ainsi que toutes parties de l'Empire britannique non membres séparés de la Société des Nations

Great Britain and Northern Ireland : and all parts of the British Empire which are not separate Members of the League of Nations

Oscar F. Dowson Wm. H. COLES

Canada:

C. H. L. SHARMAN.

Canada:

Inde :

India :

Julgarie :

G. HARDY

Bulgaria :

Chine :

N. MOMTCHILOFF

China :

Colombie :

Hoo Chi-Tsai.

Colombia :

ad referendum

Rafael GUIZADO

Cuba :

G. de BLANCK

Cuba :

Danemark :

William BORBERG.

Denmark .

Egypte :

Edgar GORRA

Egypt :

Equateur :

Ecuador :

Espagne :

Alex GASTELO

Spain :

Julio CASARES

Nº 4618

| 1939 Leagu                                         | se of Nations — Treaty Series.               | 323                                     |
|----------------------------------------------------|----------------------------------------------|-----------------------------------------|
| E. A                                               |                                              | Estonia :                               |
| Estonie:                                           | J. KÖDAR.                                    | France:                                 |
| France:                                            | P. DE REFFYE G. BOURGOIS                     | Greece :                                |
| Grèce:                                             | Raoul BIBICA-ROSETTI A. CONTOUMAS            | Ortice :                                |
| Honduras:                                          | J. LÓPEZ PINEDA.                             | Honduras:                               |
| Hongrie:                                           | Sous réserve de ratification                 | Hungary:                                |
|                                                    | VELICS                                       | Japan :                                 |
| Japon:                                             | Massa-aki HOTTA                              | Mexico:                                 |
| Mexique : Monaco :                                 | Manuel Tello                                 | I fonaco :                              |
| Damania :                                          | Xavier Raisin                                | Panama :                                |
| Pays-Bas:                                          | rescrendum: Dr Ernesto Hoffmann              | The Netherlands:                        |
|                                                    | DELGORGE<br>G. BEELAERTS VAN BLOKLAND        | Poland:                                 |
| Pologne:                                           | Снорźко                                      | Portugal:                               |
| Portugal:                                          | Augusto de Vasconcellos José Caeiro da Matta | Portuga.                                |
| Roumanie :                                         | C. ANTONIADE                                 | Roumania:                               |
| Suisse:                                            | C. Gorgé                                     | Switzerland :                           |
| Tchécoslovaquie :                                  | Dr Antonín Koukal                            | Czechoslovakia:                         |
| Union des Républiques<br>soviétiques ser alistes : |                                              | Union of Soviet<br>Socialist Republics: |
| Uruguay:                                           | G. LACHKEVITCH                               | Uruguay :                               |
|                                                    | V. BENAVIDES Alfredo DE CASTRO               |                                         |
| Venezuela:                                         | ad referendum: AROCHA                        | Venezuela:                              |

No. 4618

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Ref. 23-Ext-73

## NOTE VERBALE

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America at Madrid and, with reference to the Embassy's nots No. 193 of March 26, 1973, has the moner to inform it that the Provincial Court of Barcelona, by a decision dated November 13, 1973, of which a photocopy is enclosed, agreed to grant the extradition of Antonio Flores, a United States citizen, requested by the United States authorities; however, the surrender of the aforesaid person must be postponed until the actions pending against him in Spain have been fully resolved.

The Ministry of Foreign Affairs requests the Embassy to acknowledge receipt of this note verbale.

[Complimentary close]

Madrid, December 22, 1973

[Initialed]

United States Embassy,

Madrid

# DEPARTMENT OF STATE

(TRANSLATION)

LS NO. 39357 - B

Limited Proceedings No. 53 of 1973 Barcelona Court No. 6 Extradition

I, José Josquin Sendra Espla, Clerk of the Fourth Section, Provincial Court of Barcelons, hereby certify:

That in the record of the extradition proceedings, a continuation of the course of the extradition of United States citizen Antonio Flores, requested by the Embassy of the United States of America at Madrid, corresponding to Limited Proceedings No. 53 of 1973 of Examining Court No. 6, Barcelona, the following decision was handed down:

Decision. Judge Tomás González Román Fernández, Presiding.

Judges: Eloy Mandaña Domínguez and Carlos Jou Juanols. Barcelona,

November 13, 1973.

### WHEREAS:

This extradition proceeding concerning United States citizen Antonio Flores, requested by the United States Embassy at Madrid, was brought as the result of a resolution approved in the Council of Ministers on July 5, 1973. A warrant of arrest for Antonio Flores had been issued by the United States District Court for the Southern District of New York on January 8, 1973, for the crime of conspiracy to transport and sell narcotic drugs in the United States, committed between January 1, 1968 and April 30, 1971, and another warrant of arrest, dated April 5, 1973, had been issued by the Grand Jury of the United States District Court for the Eastern District of New York, for the crime of conspiracy to receive, conceal, buy, sell, and facilitate the transport and conceal-

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ment of heroin and cocaine, narcotic drugs, after they had been brought illegally to and imported into the United States, which crime was committed between January 1 and August 31, 1968, approximately;

Antonio Flores, the fugitive, was arrested on March 23, 1973, and placed in the Barcelona Men's Prison. He stated before the Examining Court that he intended to oppose extradition because the charges brought against him by the New York courts were false;

Antonio Plores, the fugitive, also known as Antonio-Javier Flores
Serrano, uses the name of Luis Serrano Flores as well;

In conformity with the provisions of Article 17(2) of the Extradition Law of December 26, 1958, Examining Court No. 6 of Barcelona referred the case to this court, where it has been handled in accordance with the aforesaid law; the hearing was set for November 9, 1973, in the presence of the Government Attorney, the defendant, the defense counsel, and the prosecutor. Antonio Flores, the fugitive, stated that he had nothing to say; the Government Attorney spoke and requested that the extradition sought by the United States court be granted, but only after the person concerned shall have served any sentence imposed on him for crimes committed in Spain. The defense counsel also addressed the court and requested that the extradition not be granted;

There is no doubt about the precedence of the sources of law that govern extradition matters, as the defendant himself recognizes in his brief filed on July 16 for appeal of amendment of the decision of the judge who ordered his detention. Those sources are the international treaties which govern the conditions that must exist with respect to the proceeding if they contain regulations regarding it, and only when there

are no such regulations or when there is some omission in them will the Spanish Law of December 26, 1958, be applied, as Article 1 of that Law provides; therefore, as will be examined later, the reasons stated in opposition may be rejected;

The principal objection stated is based on the fact that the charges against the person sought are related to the period between January 1968 and April 30, 1971. The defense argument concludes with the statement that at that time neither the [Extradition] Treaty of 1904 nor the Treaty of 1970, now in force, was applicable. With respect to the Extradition Treaty of May 29, 1970, between Spain and the United States of America, is force since June 16, 1971, that statement is correct, and therefore the objection based on the lack of retroactive effects of the said Treaty is pertinent and admissible; however, with respect to the Treaty of June 15, 1904, ratified by Spain April 6, 1908, the argument is not admissible because, although the objection is correct in that the said Treaty does not include the offenses referred to as drug traffic, it is admissible only in part or with time limitations, inasmuch as the Coavention for the Suppression of Illicit Traffic in Dangerous Drugs, signed at Geneva on July 26, 1936 and ratified by the United States in 1947, is not, as alleged, a mere statement of principles or assumption of commitments or obligations without any effect whatsoever unless developed and specifically included in the domestic law of the signatory; instead, that multilateral Convention, obviously directed at international control of the drug traffic, acquired full force in our country upon ratification by Spain on September 16, 1970, and although it recommends or requires that certain aspects be formulated a posteriori by domestic law, there is no

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it had the force of law and its application was an inescapable obligation of the courts. It therefore follows that the aforesaid Treaty of 1904 was supplemented by the provisions of Articles 2 and 9 of that Convention; Articles 9 states that "the offenses set out in Article 2 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties" and Article 2 includes conspiracy to commit any of the offenses specified in paragraph (a) thereof related to the manufacture of or traffic in narcotic drugs; therefore, these provisions must be applied in the assumption that the Treaty of 1904 is here concerned;

If it is concluded from the foregoing that the Treaty of 1904 is applicable, it is also concluded that some limitations must be clearly stated, owing to the charge that the fugitive conspired with other persons to receive, conceal, buy, sell, or facilitate the transport to the United States of an undetermined quantity of heroin or other drugs during the approximate period of January 1968 to April 30, 1971, as evidenced by several acts committed by Antonio Flores himself or his co-conspirators; and/is concluded from the foregoing that the request for extradition must be totally rejected with respect to the charges brought against him before the United States District Court for the Esstern District [of New York] because they only include acts countred between January and August 1968, that is, outside the effectiveness of . Treaty of 1904 taken in conjunction with the aforesai Convention; and with respect to the charges brought against him before the Court of the Southern District of New York, the extradition must be granted, but expressly limited to activities from September 3, 1970 to April 30, 1971, all previous activities being excluded; 3

The other arguments presented in support of the objection refer to the alleged noncompliance with the rules governing the detention of the person sought, whether those of the Treaty of 1904 are understood to be applicable or those of the Spanish law of December 26, 1958. With respect to this, it must be stated that the admissibility or inadmissibility of extradition is not affected by the provisions of either agreement because extradition does not depend on whether or not the subject is detained. Moreover, Article 12 of the Treaty of 1904 was not violated because it authorizes detention for a period not exceeding two months so that the requesting government may lay before the judge legal evidence of the guilt of the accused, and that period may be extended during exemination of the charges preferred. However, if it is observed that such restrictions are directed to the requesting Government in order to urge it to present its claim in the proper form within a specific period, ...th the provision that if it does not do so, the person under arrest must be released, and that the mandate of Article 12 is directed to the junge or magistrate, it will be concluded that the arguments in support of the objection are not valid, especially in view of the fact that the United States Government complied with the two-month period by submitting to the Spanish Government, through the proper channels, the request and its supporting documents on April 30, 1973, while the arrest took place on Merch 23, 1973. Neither has Article 12 of the Spanish law, if applicable, been violated because, apart from the objections that might be made in general to any prolonged detention, our system consists of two phases: the administrative, which is governed by Articles 10 to 15 of that law, and the judicial, covered by Articles 16 to 20 thereof. In the first phase

ther? may be normal detention, that is, after the Government has agreed that the procedure is justified (Article 12(3)), as well as the prior or urgent detention referred to in Articles 13 and 14, that is, arrest by government officials, in order to prevent the flight of the alleged criminal, made on the basis of a direct request through diplomatic channels, as in this case, or through administrative channels. In these latter situations, the change of the normal order, by providing for the arrest first, followed by the receipt of the request and the Government's decision, may result in the lapse of the period indicated in Article 13 of the law, but without affecting the admissibility or inadmissibility of the extradition which, as has been stated, does not depend on whether the subject is detained or not; the failure of the foreign government to comply with that period would only cause the person sought to be released; this is implied by the last paragraph of Article 14, whose mandate, it may be observed, is directed to the administrative authorities, who can, moreover, also request justifications or clarifications, pursuant to Article 12, before granting a continuation of the proceeding and turning the arrested person and the certification over to the judicial authority within the 24 hours ordered by Article 15 of the said law, thus beginning the second and last of the two phases:

Neither can the objection be sustained regarding the prior formal promise of the requesting Government because, pursuant to Article 1(1) of the aforesaid Spanish law, creaty provisions are to be given priority application and such a condition is already imposed on the United States Government by Article 4 of the applicable Treaty of June 5, 1904, unless the accused gives his express and voluntary consent;

Insemuch as it appears in the record of this case that the fugitive is the defendant in two proceedings for crimes in Spanish territory, one, Summary Proceeding No. 25 of 1973 before Examining Court No. 9 of Rurcelona, and the other, a drug possession case before the Examining Court of Logrono, therefore, in addition to the limitations mentioned, it is proper to delay surrender of the person sought until he has discharged his liabilities in Spain, pursuant to Article 8 of the Spanish Lew of 1958, he, Antonio Flores, in the meantime remaining in prison at the disposition of this Court.

THEREFORE: In view of the articles and provisions cited and others which are applicable, the Court hereby rules:

The extradition of Antonio Flores, also known as Antonio-Javier Flores Serrano, who uses the name of Luis Serrano Flores as well, a United States citizen born in Caguas, Puerto Rico, in 1937, is admissible, and his extradition is granted, at the request of the United States of America, limited solely and exclusively to the alleged crime of conspiracy to violate Sections 173 and 174 of Title 21 of the United States Code, of which crime he is accused before the Court of the Southern District of New York, and further expressly limited with respect to time to the acts committed between September 3, 1970 and April 30, 1971, excluding any previous or subsequent acts. The person named should be delivered up to the requesting country and remain subject to the competent court, and is understood that the extradition is contingent upon the formal promise of the United States Government that the aforesaid person will not be prosecuted for previous offenses or offenses foreign to this extradition request unless he expressly consents to such prosecution. The valuables, articles, and money taken from the fugitive shall also be surrendered to the requesting State.

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- 2. The aforesaid surrender of the fugitive shall be delayed until any liabilities arising from the summary proceedings in process against him in Examining Court No. 9 of Barcelona and the Examining Court of Logrono have been discharged in full, to which end this Court shall be duly informed of the results of those proceedings and in the meantime, the person sought shall remain in detaction at the disposition of this Court. An order shall be issued to that effect to the Barcelona Men's Prison and ordering further that this Court be informed of the date on which the aforesaid liabilities are discharged in full so that the appropriate order may then be issued for the aforesaid surrender of the person sought. The money (in dollars) taken from the accused shall be deposited in the Bank of Spain at the disposition of this Court, after a list is made identifying the bills, and the articles and documents shall remain in the custody of the Clerk until the said surrender takes place.
  - 3. The requested extradition of the aforesaid Antonio Flores is denied with respect to the claim of Court of the Eastern District of New York and the charges brought against him before that Court.

A certified copy of this decision shall be transmitted to the Ministries of the Interior and Justice.

The above decision was handed down and signed by the Judges of the Court, whose signatures I hereby certify.

Signed and sealed: Tomás G. Román, Eloy Mondaña. Carlos Jou. Sendra.

Tr. compliance with the above order, I hereby issue and sign this document at Barcelons, December 7, 1973.

(a) Sendra

Approved: [Signature] Presiding Judge No. 136. Verbal note\* - The Embassy of the United States of America greets attentively the Ministry of Exterior Affairs and has the Honor of referring to the #55 Verbal Note of that Department, Ref. 23-Ext-73, dated February 8, 1974, in relation to the extradition of the North America citizen, Antonio Flores. Upon receipt of the aforementioned Verbal Note from the Ministry, the Embassy, made telegraphic contact with the Department of Justice of the United States of America, by way of the State Department in Washington, D.C., to be assured of the formal promise that the Ministry solicited in petition from the Ministry of Justice. The response that just arrived at the Embassy offers the specific assurance on the part of the Department of Justice That Antonio Flores will not be prosecuted in the United States of America for prior infractions or infractions different than those which are concretely referred to by the decision portion of the dictated decree by the Provincial Court of Barcelona dated November 13, 1973.

The Embassy of the United States takes this opportunity to again reaffirm its well considered assurances to the Ministry of Exterior Affairs - Madrid, February 13, 1974."

(emphasis added)

<sup>\*</sup> Translated by Norma Seltzer, Spanish Interpreter for United States District court and State Supreme Court.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-against-

NOTICE OF MOTION

ANTONIO FLORES,

: Indct. No. 73 Cr. 19

Defendant.

73-0304

SIRS:

PLEASE TAKE NOTICE that upon the annexed statement of HOWARD J. DILLER, dated February 26, 1976, and the annexed papers thereto, the undersigned will move this Court, on a date to be fixed by the Court, at the United States Court House, Foley Square, New York, for an order precluding the United States from introducing certain evidence against the above-named defendant in the prosecution of the above indictment, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York February 26, 1976

Yours, etc.,

DILLER, SCHMUKLER & ASNESS HOWARD J. DILLER Attorney for Defendant 345 Park Avenue New York, New York 10022 (212) 371 1400

TO: United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, N.Y. 10007

Hon. Dudley B. Bonsal, U.S. District Judge UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

Criminal No. 73Cr19

ANTONIO FLORES

Defendant

TO: FONORABLE DUDLEY B. BONSAL United States District Court Southern District of New York

## PRE-TRIAL MOTION OF DEFENDANT ANTONIO FLORES

Now comes the defendant, Antonio Flores through counsel, Howard J. Diller, 345 Park Avenue, New York, New York, and moves this Honorable Court for a pre-trial ruling concerning the introduction of certain evidence at the time of trial of Antonio Flores.

# Background to Extradition of Antonio Flores from Spain to the United States

On January 8, 1973 a warrant of armest was issued in the United States District Court for the Southern District of New York against Antonio Flores for the crime of conspiracy to transport and sell narcotic drugs in violation of sections 173 and 174 of Title 21, United States Code during the period between January 1, 1968 and April 30, 1971.

On March 23, 1973 Flores was arrested as a fugitive and incarcerated in Barcelona's Men's Prison and has not been at liberty since then. Subsequently, the United States sought Flores' extradition and a hearing was finally had at Barcelona, Spain, on November 13, 1973 where all parties were duly represented.

The Government attorney requested the Spanish Court to

grant the extradition of Flores to the United States after he shall have served any sentence imposed for violation of Spain's passport laws and its law relating to the illegal possession of marihuana.

Flores had opposed extradition on the grounds that neither the Extradition Treaty of 1904 nor the Extradition Treaty of May 29, 1970, which was entered into force June 16, 1971 (22 UST 737;TIAS 7136) was applicable to the period of the alleged conspiracy covered in the indictment, namely, Jenuary 1, 1968 to April 30, 1971.

Pursuant to the hearing thus held, a decision was rendered by Examining Court No. 6 at Barcelona, Spain, by Presiding Judge Tomas Gonzales Ramon Fernandez on November 13, 1973. The Court ruled with respect to Flores' contentions as follows:

- (1) The Treaty of May 29, 1970, effective June 16, 1971, could not be made applicable to the defendant since its effective date is subsequent to the time period set forth in the indictment: April 30, 1971.
- (2) However, the Treaty of June 1: 1904 ratified by Spain April 6, 1908, and amended by the subsequent Convention for the Suppression of Illicit Traffic in Dangerous Drugs, signed at Geneva June 26, 1936 and ratified by the United States in 1947 acquired full force and effect in Spain on September 16, 1970 and in force as of September 3, 1970.\*

The Court further held that articles 2 and 9 of the Treaty of 1904 covered any future treaty of extradition between Spain and the United States and; moreover, Article 2 also included "conspiracy" to commit, inter alia, offenses relating to the traffic in narcotic drugs.

The Court thus granted the United States' request for extradition of Flores stating however that it was "expressely limited with respect to time to the acts committed between \* The Geneva Convention of 1936 was subsequently replaced by (frontote continued on next page)

September 3, 1970 and April 30, 197" excluding any previous or subsequent acts", (emphasis added) and, furthermore, "it is understood that the extradition is contingent upon the formal promise of the United States Government that the aforesaid person will not be prosecuted for previous offenses foreign to this extradition request unless he expressly consents to such prosecutions."

## Discussion of the Issues Presented

This motion is submitted in support of the defendant's contention that the acts and declarations of the defendant and conspirators made prior to September 3, 1970 or after April 30, 1971 are to be excluded in light of the decision rendered by Judge Fernandez in Barcelona, Spain on November 13, 1971. (See Appendix A.)

The Grand Jury charged desendant Flores (and others) with having conspired to violate the federal narcotic laws as encompassed in 21 U.S.C. 173, 174 from on or about January 1, 1968 to on or about April 30, 1971.

However, the Spanish Court in granting the United States' request for extradition of Flores reduced the period of the alleged conspiracy as above stated to the period of September 3, 1970 to April 30, 1971 for which Flores may be prosecuted. Moreover, the Spanish Court went a little further when it expressly stated at page seven of the translated decision:

"It is understood that the extradition is contingent upon the formal promise of the United States Government that the aforesaid person (Flores) will not be prosecuted for previous offenses or offenses foreign to this extradition request unless he expressly consents to such prosecutions."

It is not the defendant's contention herein that the

<sup>\*</sup> the Single Convention on Narcotic Drugs on March 30, 1961 and entered into full force and effect for the United States on June 24, 1967 and entered into full force and effect for Spain on March 1, 1966. (18 UST 1407; TIAS 6298)

United States Attorney intends to prosecute Flores in accordance with the time period set forth in the original indictment but rather intends merely to treat this case as if the indictment contained the now shortened time period. The problem presents proffers itself however when the prosecutor/evidence prior to September 3, 1970 as tending to prove the existence of the conspiracy and that Flores was a member thereof.

It is with the latter proposition that this motion deals.

The defendant is cognizant of the general proposition that in a prosecution for violation of the conspiracy laws the prosecutor may introduce relevant evidence prior to the period alleged in the conspiracy indictment tending to show the existence of the conspiracy and that the defendant was a member of it.

The defendant is aware of the well known second circuit holding in <u>United States v. Dennis</u>, 183 F 2d 201 (1950). Wherein Judge Learned Hand at page 231 stated:

"There can be no logical reason for limiting evidence to prove that the defendants were in a conspiracy October 1945 and 1948 to the period of the charge; if they were in the conspiracy earlier, declarations of any one of them or of any other person acting in concert with them are as competent as those made within the period laid. Whether they are relevant depends upon how far they form a rational support for believing that the conspiracy continued to 1948; but it is nonsense to say that events occurring before a crime, can have no relevance to the conclusion that the crime was committed; and declarations are no different from any other evidence."

(However Judge Learned Hand went on to say that there can not, of course, exist a declaration which is so remote rationally as to make it incompetent and irrelevant).

The defendant does not argue with the well recognized legal principle that statements of a conspirator made in furtherance of a conspiracy are admissible against all other members of the

conspiracy. (See Section 801 (d) (2), Federal Rules of Evidence.)

Mr. Justice Marshal recently stated in Anderson v. United

States, 417 U.S. 211 (1974) at page 218:

"The doctrine that declarations of one conspirator, if the declaration was made during the course of and in furtherance of the conspiracy charged is a well-recognized exception to the hearsay rule which would otherwise bar the introduction of such out-of-court declarations (citations omitted). The hearsay conspiracy exception applies only to declarations made while the conspiracy charged was still in progress, a limitation that this Court has scrupulously observed."

The Government's position apparently is that this case is no different from any other conspiracy case except that the indictment has been amended shortening the time period of the conspiracy. The Government will probably further urge upon this Court that it recognizes its responsibility of being required to satisfy the jury of the existence of a conspiracy within the new time period; however, this does not mean they can not prove activities done either before or after the stated period of the conspiracy alleged, and that Flores was a knowing member of it.

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The defendant respectfully urges upon this Court that the decision of the Spanish Court must be adhered to in all respects since the Spanish Government granted the extradition request of the United States conditioned upon the United States agreeing to abide by it. The Spanish Court decision in effect is one in which the respective parties concerned consented to and agreed to its ruling prior to the United States availing itself of the decision.

The defendant further respectfully urges upon this Court that an instruction to the jury to disregard evidence outside the time period of the alleged conspiracy in determining the

"In other words, a conspiracy often is proved by evidence that is admissible only upon assumption that conspiracy existed. The naive assumption that predjudiced effects can be overcome by instructions to the jury, all practicing lawyers know to be unmitigated fiction." (See e.g. Blumenthal v. United States, 332, U.S. 539 (1947).

Furthermore, a careful reading of the extradition decision appears dispositive of the question as to the introduction of acts committed prior to or subsequent the time period of September 3, 1970 and April 30, 1971 when it states at page seven of the translated copy that the extradition is expressly limited with respect to time to the acts committed between any previous or subsequent acts." It is noted that the decision is unequivocal as to what the United States may do at its trial of Flores.

The extradition decision on page four of the translated copy states ". . . and with respect to the charges brought against him (Flores) before the Court of the Southern District of New York, the extradition must be granted, but expressly limited to activities from September 3, 1970 to April 30, 1971, all previous activities being excluded." It is submitted that the decision is crystal clear in its language unless the United States Attorney is now prepared to state that the Spanish Court did not mean what is said. The United States Government must be held to comply with the decision and not proffer any evidence prior to September 3,1970.

## A 51

Indeed, it would make a mockery of the decision to state that the United States will prosecute only for activities between September 3, 1970 and April 30, 1971 but would introduce activities prior to September 3, 1970 to prove the crime.

It is respectfully submitted in this regard that if the Spanish Court believed the the United States could corcumvent its decision to exclude acts outside the new time period of September 3, 1970 and April 30, 1971 by bringing them to the attention of the jury in another way they would never have granted extradition in this case. The United States must be held to adhere to its own agreement and the decision of the Spanish Court.

Respectfully submitted,

HOWARD J. DILLER

(TRANSLATION)

LS NO. 39357 - A T-125/R-XX Spanish

MINISTRY OF FOREIGN AFFAIRS No. 638 Ref. 23-Ext-73

#### NOTE VERBALE

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America at Madrid and, with reference to the Embassy's note No. 193 of Farch 26, 1973, has the honor to inform it that the Provincial Court of Barcelona, by a decision dated November 13, 1973, of which a photocopy is enclosed, agreed to grant the extradition of Antonio Flores, a United States citizen, requested by the United States authorities; however, the surrender of the aforesaid person must be postponed until the actions pending against him in Spain have been fully resolved.

The Ministry of Foreign Affairs requests the Embassy to acknowledge receipt of this note verbale.

[Complimentary close]

Madrid, December 22, 1973

[Initialed]

United States Embassy.

Madrid

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1:11

# DEPARTMENT OF STATE DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

LS NO. 39357 - P.

Limited Proceedings No. 53 of 1973 Barcalona Court No. 6 Extradition

I, José Josquin Sendra Espla, Clerk of the Fourth Section, Provincial Court of Barcelona, hereby certify:

That in the record of the extradition proceedings, a continuation of the course of the extradition of United States citizen Antonio Plores, requested by the Embassy of the United States of America at Madrid, corresponding to Limited Proceedings No. 53 of 1973 of Indianing Court No. 6, Barcelons, the following decision was handed down:

Decision. Judge Tomás González Román Fernández, Presiding.

Judges: Eloy Mandaña Domínguez and Carlos Jou Juanola. Barcelona,

November 13, 1973.

### WHEREAS:

This extradition proceeding concerning United States citizen Antonia Flores, requested by the United States Embassy at Madrid, was brought as the result of a resolution approved in the Council of Ministers on July 5, 1973. A warrant of arrest for Antonia Flores had been issued by the United States District Court for the Southern District of New York on January 8, 1973, for the crime of conspiracy to transport and sell nercotic drugs in the United States, committed between January 1, 1968 and April 30, 1971, and another warrant of arrest, dated April 5, 1973, had been issued by the Grand Jury of the United States District Court for the Eastern District of New York, for the crime of conspiracy to receive, conceal, buy, sell, and facilitate the transport and conceal-

ment of heroin and cocaine, narcotic drugs, after they had been brought illegally to and imported into the United States, which crime was committed between January 1 and August 31, 1968, approximately;

Antonio Flores, the fugitive, was arrested on March 23, 1973, and placed in the Barcelona Men's Prison. He stated before the Examining Court that he intended to oppose extradition because the charges brought against him by the New York courts were false;

Antonio Flores, the fugitive, also known as Antonio-Javier Flores Serrano, uses the name of Luis Serrano Flores as well;

In conformity with the provisions of Artic. 17(2) of the Extradition Law of December 26, 1958, Examining Court No. 6 of Barcelona
referred the case to this court, where it has been handled in accordance
with the aforesaid law; the hearing was set for November 9, 1973, in the
presence of the Government Attorney, the defendant, the defense counsel,
and the prosecutor. Antonio Flores, the fugitive, stated that he had
nothing to say; the Government Attorney spoke and requested that the
extradition sought by the United States court be granted, but only after
the person concerned shall have served any sentence imposed on him for
crimes committed in Spain. The defense counsel also addressed the court
and requested that the extradition not be granted;

There is no doubt about the precedence of the sources of law that govern extradition matters, as the defendant himself recognizes in his brief filed on July 16 for appeal of amendment of the decision of the judge who ordered his detention. Those sources are the international treaties which govern the conditions that must exist with respect to the proceeding if they contain regulations regarding it, and only when there

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are no such regulations or when there is some omission in them will the Spanish Law of December 26, 1958, be applied, as Article 1 of that Law provides; therefore, as will be examined later, the reasons stated in opposition may be rejected;

The principal objection stated is based on the fact that the charges against the person sought are related to the period between January 1968 and April 30, 1971. The defense argument concludes with the statement that at that time neither the [Extradition] Treaty of 1904 nor the Treaty of 1970, now in force, was applicable. With respect to the Extradition Treaty of May 29, 1970, between Spain and the United States of America, in force since June 16, 1971, that statement is correct, and therefore the objection based on the lack of retroactive effects of the said Treaty is pertinent and admissible; however, with respect to the Treaty of June 15, 1904, ratified by Spain April 6, 1908, the argument is not admissible because, although the objection is correct in that the said Treaty does not include the offenses referred to as drug traffic, it is admissible only in part or with time limitations, inasmuch as the Convention for the Suppression of Illicit Traffic in Dangerous Drugs, signed at Geneva on (July 26, 1936 and ratified by the United States in 1947, is not, as alleged, a mere statement of principles or sumption of corastments or obligations without any effect whatsoever unless developed and specifically included in the domestic law of the signatory; instead, that multilateral Convention, obviously directed at international control of the drug traffic, acquired full force in our country upon ratification by Spain on September 16, 1970, and although it recommends or requires that certain aspects be formulated a posteriori by domestic law, there is no

doubt that, from the time of its entry into force, on September 3, 1970.

it had the force of law and its application was an inescapable obligation of the courts. It therefore follows that the aforesaid Treaty of 1904 was supplemented by the provisions of Articles 2 and 9 of that Convention;

Articles 9 states that "the offenses set out in Article 2 shall be deemed to be included as extradition crimes in any extradition treaty which has been or may hereafter be concluded between any of the High Contracting Parties" and Article 2 includes conspiracy to commit any of the offenses specified in paregraph (a) thereof related to the manufacture of or traffic in narcotic drugs; therefore, these provisions must be applied in the assumption that the Treaty of 1904 is here concerned;

If it is concluded from the foregoing that the Treaty of 1904 is applicable, it is also concluded that some limitations must be clearly stated, owing to the charge that the fugitive conspired with other persons to receive, conceal, buy, sell, or facilitate the transport to the United States of an undetermined quantity of heroin or other drugs during the approximate period of January 1968 to April 30, 1971, as evidenced by several acts committed by Antonio Flores himself or his co-conspirators; and/is concluded from the foregoing that the request for extradition must be totally rejected with respect to the charges brought against him before the United States District Court for the Eastern District [of New York] because they only include acts committed between January and August 1968, that is, outside the effectiveness of the Treaty of 1904 taken in conjunction with the aforesaid Convention; and with respect to the charges brought against him before the Court of the Southern District of New York, the extradition must be granted, but expressly limited to activities from September 3, 1970 to April 30, 1971, all previous activities being excluded;

The other arguments presented in support of the objection refer to the alleged noncompliance with the rules governing the detention of the person sought, whether those of the Treaty of 1904 ere understood to be applicable or those of the Spanish law of December 26, 1958. With respect to this, it must be stated that the admissibility or inadmissibility of extradition is not affected by the provisions of either agreement because extradition does not depend on whether or not the subject is detained. Moreover, Article 12 of the Treaty of 1904 was not violated because it authorizes detention for a period not exceeding two months so that the requesting government may lay before the judge legal evidence of the guilt of the accused, and that period may be extended during examination of the charges preferred. However, if it is observed that such restrictions are directed to the requesting Government in order to urge it to present its claim in the proper form within a specific period, with the provision that if it does not do so, the person under arrest must be released, and that the mandate of Article 12 is directed to the judge or magistrate, it will be concluded that the arguments in support of the objection are not valid, especially in view of the fact that the United States Government complied with the two-month period by submitting to the Spanish Government, through the proper channels, the request and its supporting documents on April 30, 1973, while the arrest took place on March 23, 1973. Neither has Article 12 of the Spanish law, if applicable, been violated because, apart from the objections that might be made in general to any prolonged detention, our system consists of two phases: the administrative, which is governed by Articles 10 to 15 of that law: and the judicial, covered by Articles 16 to 20 thereof. In the first phase there may be normal detention, that is, after the Government has agreed that the procedure is justified (Article 12(3)), as well as the prior or urgent detention referred to in Articles 13 and 14, that is, arrest by government officials, in order to prevent the flight of the alleged criminal, made on the basis of a direct request through diplomatic channels, as in this case, or through administrative channels. In these latter situations, the change of the normal order, by providing for the arrest first, followed by the receipt of the request and the Government's decision, may result in the lapse of the period indicated in Article 13 of the law, but without affecting the admissibility or inadmissibility of the extradition which, as has been stated, does not depend on whether the subject is detained or not; the failure of the foreign government to comply with that period would only cause the person sought to be released; this is implied by the last paragraph of Article 14, whose mandate, it may be observed, is directed to the administrative authorities, who can, moreover, also request justifications or clarifications, pursuant to Article 12, before granting a continuation of the proceeding and turning the arrested person and the certification over to the judicial authority within the 24 hours ordered by Article 15 of the said law, thus beginning the second and last of the two phases;

Neither can the objection be sustained regarding the prior formal promise of the requesting Government because, pursuant to Article 1(1) of the aforesaid Spanish lew, treaty provisions are to be given priority application and such a condition is already imposed on the United States Government by Article 4 of the applicable Treaty of June 5, 1904, unless the accused gives his express and voluntary consent;

Inasmuch as it appears in the record of this case that the fugitive is the defendant in two proceedings for crimes in Spanish territory, one, Summary Proceeding No. 25 of 1973 before Examining Court No. 9 of Barcelona, and the other, a drug possession case before the Examining Court of Logrono, therefore, in addition to the limitations mentioned, it is proper to delay surrender of the person sought until he has discharged his liabilities in Spain, pursuant to Article 8 of the Spanish Law of 1958, he, Antonio Flores, in the meantime remaining in prison at the disposition of this Court.

THEREFORE: In view of the articles and provisions cited and others which are applicable, the Court hereby rules:

The extradition of Antonio Plores, also known as Antonio-Javier Flores Serrano, who uses the name of Luis Serrano Flores as well, a United States citizen born in Caguas, Puerto Rico, in 1937, is admissible, and his extradition is granted, at the request of the United States of America, limited solely and exclusively to the alleged crime of conspiracy to violate Sections 173 and 174 of Title 21 of the United States Code, of which crime he is accused before the Court of the Southern District of New York, and further expressly limited with respect to time to the acts committed between September 3, 1970 and April 30, 1971, excluding any previous or subsequent acts. The person named should be delivered up to the requesting country and remain subject to the competent court, and is understood that the extradition is contingent upon the formal promise of the United States Government that the aforesaid person will not be prosecuted for previous offenses or offenses foreign to this extradition request unless he expressly tonsents to such prosecution. The valuables, articles, and money taken from the fugitive shall also be surrendered to the requesting State.

- any liabilities arising from the summary proceedings in process against him in Examining Court No. 9 of Barcelons and the Examining Court of Logroño have been discharged in full, to which end this Court shall be duly informed of the results of those proceedings and in the meantime, the person sought shall remain in detention at the disposition of this Court. An order shall be issued to the effect to the Barcelons Men's Prison and ordering further that this Court be informed of the date on which the aforessid liabilities are discharged in full so that the appropriate order may then be issued for the aforessid surrender of the person sought. The money (in dollars) taken from the accused shall be deposited in the Bank of Spain at the disposition of this Court, after a list is made identifying the bills, and the articles and documents shall remain in the custody of the Clerk until the said surrender takes place.
  - 3. The requested extradition of the aforesaid Antonio Flores is denied with respect to the claim of Court of the Esstern Mistrict of New York and the charges brought against him before that Court.

A certified copy of this decision shall be transmitted to the Ministries of the Interior and Justice.

The above decision was handed down and signed by the Judges of the Court, whose signatures I hereby certify.

Signed and scaled: Tomás G. Román, Eloy Mondañs. Carlos Jou. Sendra.

In compliance with the above order, I hereby issue and sign this document
at Preschon, December 7, 1973.

[s] Sendra

Approved: [Signature] Presiding Judge UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA.

1 73 Cr. 19 (D.B.B.)

ANTONIO FLORES.

Defendant.

## GOVERNMENT'S MEMORANDUM OF LAW

This memorandum is submitted in opposition to the defendant's motion to limit the evidence the Government is permitted to introduce against the defendant at grial.

The Government agrees with the "background to the extradition of Antonio Flores" as set out in his motion papers. However it is the Government's position that at trial all the evidence of the defendant's conspiratorial behavior is admissable against him subject only to the limitation that the jury must find that all the necessary elements of the crime charged existed sometime during the period September 3, 1970 to April 30, 1971.

A reading of the translated copy of the Spanish court's opinion and order of extradition makes it clear that the time limitation placed on the order of extradition has to

do with the effective date of the Convention for the Suppression of Illicit Traffic in Dangerous Drugs, which in
effect amended the Treaty of 1904 so as to make the instant
crims an extraditable offense. Therefore, it is equally clear
that the Spanish public policy rationals in limiting the order
of extradition has to do with insuring that the defendant is
convicted only for a crime which occurred after the effective
date of the Convention, namely September 3, 1970. The
Spanish court has no interest in the method of proof.

The Government contends that an instruction to the jury that they must find all the elements of the crime to have existed sometime during the period specified in the order of extradition will cearly satisfy the Spanish.

In a closely analogous line of cases involving claims that it was violative of the 'ex post facto' clause of the Constitution to admit evidence of pre-statutory behavior, the Court has consistently held to the admission of such evidence to be proper. United States v. Fino, 478

F.2d 35, 38 (2d Cir. 1973), cert. denied 417 U.S. 918 (1974);
United States v. Smith, 464 F.2d 1129 (2d Cir.), cert. denied,
409 U.S. 1023 (1972); United States v. Ferrara, 458 F.2d

868 (2d Cir.), cert. denied, 408 U.S. 931 (1972); United

States v. Binder, 453 F.2d 805, 808 (24 Cir. 1971), cert.

demied 407 U.S. 920 (1972); United States v. Russo 442

F.2d 498, 501 (2d Cir. 1971), cert. Hemied 404 U.S. 1023

(1972). The court reasoned that such behavior was admissible "to assist the trier of the fact to determine the existence and purpose of the conspiracy and 'n illumine the intent and purpose of the post-enactment behavior." United States v.

Smith, supra at 1133. The Court has approved the use of a limiting instruction to insure that the jury understands that it must find all the elements existing after the effective date of the statute. United States v. Russo, supra. Hence the Court, in dealing with a problem of constitutional proportions, chose not to require the Government to limit its proof, but rather to have the jury appropriately instructed.

The same considerations are present in the instant case as were present in the above-cited cases. That is to insure that the jury finds all the elements present after the effective date of the statute or treaty. As with the "ex post facto" cases this does not require the Government to limit its proof, but is properly accomplished by appropriate jury instructions.

Therefore, the defendant's pre-trial motion to limit the Government's proof to evidence occurring between September 3, 1970 and April 30, 1971 should be denied.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

JEFFREY HARRIS, Assistant United States Attorney

-Of Counsel-

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK CARY
UNITED STATES OF AMERICA

-against
AMITONIO FLORES,

Defendant.

United States Attorney for the Southern District of New York Attorney for the United States of America JIFFELY HARRIS, ESQ., Assistant United States Attorney Of Counsel

DILLER, SCHIBELLER & ASNESS, ESQS.

345 Park Avenue, New York, N.Y. 10022
Attorneys for Defendant

By HOWARD J. DILLER, ESQ.

### MEMORANDUM

BONSAL, D. J.

Defendant Antonio Plores is charged with conspiracy to transport and sell narcotic drugs from January 1, 1968 through April 30, 1971 in violation of Sections 173 and 174 of Title 21 of the United States Code. On January 8, 1973 an indictment was filed and a bench warrant was issued for the defendant, who was a fugitive. On March 23, 1973, the defendant was arrested in Barcelona, fpain and imprisoned in Barcelona's Hen's Prison. The United States

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sought the defendant's extradition from Spain and a hearing was held in Parcelona on November 13, 1973. An extradition order was granted the same day in a decision by the Provincial Court of Barcelona. For reasons not entirely clear from the record, the defendant was not returned to the United States until January, 1976.

The deferrant now roves to limit the Government's introduction of certain evidence at trial on the grounds that the extradition order is " ... limited solely and exclusively to the alleged crime of conspiracy to violate Sections 173 and 174 of Title 21 of the United States Code, ... and further expressly limited with respect to time to the acts committed between September 3, 1970 and April 30, 1971, excluding any previous or subsequent acts." U.S. Dep't of State, Division of Language Services, Translation of Lighted Proceedings No. 53 of 1973, Euroelona Court No. 6, Estradition, dated December 7, 1973, at 7 (hereinafter "Limited Proceedings No. 53 of 1973"). Defendant contends that the Government may prosecute him only as to alleged violations within the above circumscribed time period and may not introduce evidence of acts prior to September 3, 1 70 to prove the existence of the conspiracy or that the defendant was a number thereof since the " ... extradition is contingent upon the formal promise of the United States Government that the aforesaid person will not be prosecuted for previous offenses or offenses foreign to this extradition request unless he expressly consents to such presecution. Id.

A review of the Cacimion of the Tarcelona Court granting the extradition order indicates that defendant's extradition is

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limited in time to insure that the defendant is tried for an offense which was extraditable under the Treaty of June 15, 1904 ("Treaty of 1904"). The Barcelona Court, relying on the Treaty of 1904 and general principles of international law, found that although the original text of the Treaty of 1904 did not include the crime of conspiracy to traffic in narcotic drugs as an extraditable offense, the Treaty of 1904 was supplemented in 1970 by the Convention for the Suppression of Illicit Treffic in Dangerous Drugs, signed at Geneva on June 26, 1936. This Convention, which entered into force in Spain on September 3, 1970, specifically includes the crime of conspiracy to traffic in narcotic drugs as an extraditable offense. Since the Farcelona Court found the provisions of the 1970 Convention to be binding on Spanish courts, the extradition order was drafted to comply with its effective date; namely, September 3, 1970. See Limited Proceedings No. 53 of 1973, supra at 4.

Under the terms of the extradition order, the Government will have the burden of proving beyond a reasonable doubt that the conspiracy charged in the indictment was in existence between Soptember 3, 1970 and April 30, 1971 and that the defendant was a monter of it during this period. However, the Government may introduce evidence of defendant's prior acts and conversations which may be relevant to defendant's knowledge and intent with respect to acts committed during this period. Such evidence, if relevant, may be received unless offered solely to prove criminal character. United States v. Papadakis, 510 F.2d 287, 294 (2d Cir.), cert. denice, 421 U.S. 950 (1975); United States v. Deaton, 381 F.2d 114 (2d Cir.)

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1967); red. Rules Evid., Rule 404(b); see also red. Rules Evid.,
Rule 105, 801(d)(2), 803(3).

Defendant's motion is disposed of accordingly. It is so ordered.

Dated: New York, N.Y. March 24, 1976

DUDLEY B. BONSAL

U. S. D. J.

73 Cr. 19 /

(In the robing room.)

THE COURT: All right, gentlemen, the case is on for trial this morning. I have got a jury panel ready to come in and I understand there are some matters counsel want to bring up.

MR. ASNESS: Yes, Judge.

The defendant is respectfully requesting an adjournment at this time, your Honor.

THE COURT: It is awfully late in the day. This thing has been set for a long time.

MR. ASNESS: That is correct, Judge, but let me give you all the facts and circumstances surrounding why we are requesting an adjournment and then Mr. Shaw will elaborate on them.

Mr. Shaw is of counsel for the motions to be presented to the Court.

The first one, Judge, is that Mr. Flores has been out of the country, as the Court may be aware, for approximately five years. He has only been at the Men's Correctional Center for the past three months, Judge. He has been speaking to Mr. Diller, my partner, who has unfortunately been on trial almost continually throughout this period, and therefore if the case does go to trial I will be the one trying it. I have spent

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the last day and a half trying to familiarize myself with the case. I discovered it is a voluminous situation.

I just met this man for the first time, Judge, although
I saw him once before in the Men's House.

THE COURT: Yes.

MR. ASNESS: More importantly, Judge, Mr. Flores informs me the three months with the facilities available at the Men's Correctional Center, he has not been able to fully locate and secure witnesses in his behalf.

Now, naturally he couldn't prepare to do this at the time he was out of the country, he can only do it while in this country and I think the Court is aware that a prisoner with a three-month time period, who first of all was not really siming for a trial at this point, was more concerned with the motion that Mr. Shaw will argue before the Court.

THE COURT: That may be true, but that isn't what Congress says, is it?

MR. ASNESS: It is not, Judge, but as far as waiving any time rules, the defendant is more than willing to do that in order to adequately prepare himself to go forth with his own defense.

Judge, there are other tangential matters.

Unfortunately he received a severe head injry and I would like the Court to reflect upon that.

THE COURT: When was that?

MR. ASNESS: Several days ago.

THE COURT: How many days ago?

DEFENDANT FLORES: Last week.

MR. ASNESS: He is receiving medication three times a day. I have not spoken to him, but Mr. Shaw has, but he tells me he isn't the same man prior to this head injury, although I have no difficulty communicating with him, to be guite frank.

I think the most important thing is this is an extremely important trial, the Government has had five years to prepare for it, and although Mr. Flores brought it on himself, he wasn't in the country, I am not trying to say anything other, but the fact is he is here now and he has only been here three months, Judge, under arduous circumstances and he feels if the Court would grant him an adjournment he would be much better prepared to argue his case.

Before the Court rules I would like the Court to hear from Mr. Shaw who has been hired by the family in the case who has been hired as of counsel on the matters of the motions. Mr. Shaw.

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|---|-------------------------------------------------|
| 2 | MR. SHAW: If your Honor please, I was approache |
| 3 | by the family, your Honor                       |
| . | THE COURT: When was that?                       |
| 5 | MR. SHAW: Actually first through Mr. Flores     |
| 6 | who I met in MCC.                               |
| 7 | mus cours. I am trying to get the time. When    |

was it?

MR. SHAW: About two and a half weeks ago, three weeks ago, maybe more, I was in the Metropolitan Correctional Center and Mr. Flores came in to serve as an interpreter for me. I do speak some Spanish, but this is one particular individual -- and Mr. Flannery is familiar with him -- absolutely speaks no English, at least to my knowledge, so Mr. Flores came in and aided me and after a couple of times that he did that he presented me with a problem in this case and I said I know Mr. Diller, he is an excellent attorney and I think you should leave it with that and then I was contacted by the family, Mr. Flores and advised --

THE COURT: As I recall it, Mr. Diller appeared with Mr. Flores when he first appeared in the courtroom.

DEFENDANT FLORES: Yes, your Honor.

THE COURT: The first time you had no counsel, the next time you had no counsel and the next time you

had Mr. Diller, and thec was in January.

DEFENDANT FLORES: Yes, your Honor. At that time I told Mr. Diller that I would need more time because I was trying to get my wife from Spain.

THE COURT: I just wanted to check the date.

MR. SHAW: So I advised him when he first approached me with the problem that I felt Mr. Diller was a fine attorney since I worked with him on a case a number of years ago.

THE COURT: Don't talk about Mr. Diller.
Go ahead.

MR. SHAW: All right. I was then advised by the family that Mr. Diller was on trial. I spoke with Mr. Diller's office and with him in the evening and he was on trial in fact and at that point the family asked me to prepare the motion papers since Mr. Diller couldn't get to them in regard to your Honor's decision of the 24th of March.

I received a copy of the decision and I moved with the greatest dispatch as possible to try to prepare the motion which your Honor received last week.

Then I was advised when I spoke to Mr. Diller again that he still was on trial in the State Supreme

Court, that he had just -- he was going to get an

| opportunity to examine the motion papers and at that         |
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| point the family asked me also to move ahead and we had con- |
| templated this before and prepared the mandamus which was    |
| served upon your Honor at this late hour this morning.       |

THE COURT: You mean this thing that appeared on my desk?

MR. SHAW: Yes.

THE COURT: You filed this in the Court of Appeals?

MR. SHAW: Yes, your Honor, and I filed a copy with the U.S. Attorney's office.

If your Honor please, the principal argument which your Honor may not be familiar with, and the reason why this writ of mandamus has been prought on, and I didn't know whether or not to serve it or wait until your Honor's decision on the motions that were filed on the 7th of April, but the principal issue that I think is being --

THE COURT: Wait a minute, what motions on the 7th of April?

MR. SHAW: Attached as an exhibit on the papers that you have before your Honor is a copy of the motion papers and I may be wrong about the date, but I filed --

THE COURT: Did we get a motion for reconsidera-

tion and did I endorse that?

THE CLERK: No. It was returnable today the 13th.

THE COURT: It is returnable today so I haven't acted on it. This is a motion for reargument, is that it?

MR. SHAW: That is what I was saving, maybe it was very inopportune.

THE COURT: So you have a motion for reargument and you also have a motion in the Court of Appeals?

MR. SHAW: Yes.

THE COURT: Then I have no jurisdiction.

Once you filed this petition of mandamus, so far as that is concerned, I have no further jurisdiction. You can't do both.

MR. SHAW: They haven't considered it upstairs yet, Judge.

THE COURT: Whatyou did in doing that, you just ousted this Court from any determination on that motion.

That is the trouble. I don't know why you fellows do these funny things.

MR. ASNESS: Mr. Shaw most respectfully could withdraw that for a half hour period and if the Court rules against him on his motions he can reactivate it, Judge. The Court is quite correct, though.

MR. SHAW: I was not sure if I was going to get back downstairs before your Honor started this morning and have the opportunity to speak before your Honor, but I would indicate --

THE COURT: Your point is a simple one, that you say under the extradition treaty, as interpreted in Spain, the Government can only try him for violations between two specific dates, is that right?

MR. SHAW: For acts.

THE COURT: That is right, and I said in my memorandum that I go along with that. If that measures out I will go along with it, but that does not preclude the Government from introducing evidence of acts at other times which they figure not as criminal charges, but having a bearing on the knowledge and intent of the defendant.

I mean, it is just as simple as that and that is the rule.

MR. SHAW: Well, Judge, I don't know if you were aware, your Honor, when you made your decision of the formal promise that was entered into, and if you had a copy of the --

THE COURT: As I understand it I don't know about the formal promise, but the formal promise -- it isn't a question of promise, inasmuch as the provisions of

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under the new extradition treaty for acts committed in this particular period. He can only be charged with them, is that right? That is right.

I said in the memorandum I would so instruct the jury and there is no problem with that.

MR. SHAW: I think what was bargained for --

THE COURT: What?

MR. SHAW: What was bargained for?

THE COURT: Who has bargained?

MR. SHAW: It sounds funny in a criminal case to be talking contract law, but I think there was a formal promise and I think the promise was in terms of sovereign states, Spain and the United States and what was bargained for and what the judges made a decision on and what the Sovereign State of Spain agreed to in sending this man to the United States was that this man would be tried and would be only held accountable for acts during a specific period of time.

THE COURT: That is right, and that is all he is going to be held accountable for.

MR. SHAW: And that would be all the evidence that would be adduced against him and then when your Honor came to your decision, at that point the

Consul General of Spain expressed his displeasure.

THE COURT: I saw that. Is he a lawyer, the Consul General of Spain?

MR. SHAW: I don't know the inner machinations of the Department of State --

THE COURT: The protest.

MR. FLANNERY: I don't believe he drafted the decision of Spain either, which I would think your Honor properly would take as an embodiment of whatever understandings if any there were between this government and that government.

THE COURT: Sure.

MR. SHAW: There is a formal expression by Spain indicating their displeasure with the Court and I think that that formal --

THE COURT: I would like to get that counsel down as a witness and have him testify as to how he got all this dope.

You say he may be a lawyer and maybe not,
I don't know.

MR. SHAW: I don't know, I have never met him.

I did receive a phone call from the Spanish Consulate
advising me that they were cognizant of what had taken
place and I did not place the call to them.

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if he so desired.

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THE COURT: Okay.

DEFENDANT FLORES: Your Honor, my wife also took it to Spain, to the American Embassy.

MR. ASNESS: Just one minor point, your Honor. This defendant has relied upon the understanding between the two nations because he gave up certain rights, Judge. He did give up certain rights.

THE COURT: What rights did he give up? MR. ASNESS: He could have appealed this case and he would have been in Spain for another five years

THE COURT: Perhaps he has been there long enough.

MR. ASNESS: It is better to be there than to be here under these circumstances, Judge.

THE COURT: Why do you say that? If we go ahead and try this case and you go up to the Court of Appeals -- I don't think it is going to happen, but you go up to the Court of Appeals and they say he was charged with things in violation of the treaty, they will throw it out, won't they?

MR. ASNESS: Judge, here is the point. Is this Court saying that this defendant would be in a better position to be convicted and have to rely on appellate

rights or if the Court is incorrect and if we can't solve it prior to trial, I am telling this Court that if he is only charged with the acts as he understands them and the Spanish Government understands them to be during that time period, Judge, I don't think he will be convicted, whereas I am conceding, Judge -- I am serious, he will not be convicted.

I am conceding if this trial goes on now the way it is so structured by the Court and by the United States Attorney, that he doesn't really stand a chance and that is getting right down to the nitty gritty, Judge.

You can call them acts, you can call them anything you like, but the point being that if everything from 1968 on up comes out he is --

I have not heard from the Government, but I don't think you fellows even read my decision. I must say it hardly sounds like the decision I made. I said the only evidence outside of this period that can be introduced at this trial is not that he violated the narcotics law, but that he did something which is relevant to his knowledge and intent with respect to the acts performed during the period.

MR. ASNESS: Yes, your Honor.

MR. FLANNERY: Your Honor, may I address myself to a couple of things by stating a position

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cation?

with respect to a couple of the things that have been mentioned and maybe we will resolve some of them.

THE COURT: It is high time you did.

MR. FLANNERY: I would like to deal with this first seriatim, starting with the last item we were discussing.

Counsel has moved this morning for an adjournment based on over this three-month period not having had
sufficient time as I understand it to locate witnesses
without specifying what witnesses, where they might be
located, when they were last located, the number of witnesses, the type of evidence, without specifically indicating
the nature of their search and their efforts to obtain
the evidence they require.

There has been mention of a second factor
that they think should play in determining whether or not
the defendant is himself competent and prepared to continue;
that is that he had a head injury.

I have contacted the Metropolitan Correction Center where Mr. Flores is presently confined and it said that on April 5th at about 2:45 p.m. he incurred a head injury while helping officers in an altercation and he at that time hit his head --

THE COURT: Helping some officers in an alter-

this very moment.

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| 2  | MR. FLANNERY: That is what he said.                        |
| 3  | THE COURT: All right.                                      |
| 4  | MR. FLANNERY: That is what he told the medical             |
| 5  | officer and as a result of that                            |
| 6  | DEFENDANT FLORES: I didn't say that, your                  |
| 7  | Honor.                                                     |
| 8  | THE COURT: He is just reporting what they say.             |
| 9  | DEFENDANT FLORES: That is what the officer                 |
| 10 | says. I never said that.                                   |
| 11 | MR. FLANNERY: According to that report there               |
| 12 | is a two inch laceration with some minor depth to the      |
| 13 | laceration. They treated him by giving him stitches        |
| 14 | and they took an x-ray and determined that there were no   |
| 15 | fractures, no bone injuries involved and that he has been  |
| 16 | on medication daily since.                                 |
| 17 | THE COURT: This is April 8th. That is eight                |
| 18 | days ago. This is the 13th or the 14th.                    |
| 19 | DEFENDANT FLORES: I still have stitches,                   |
| 20 | your Honor.                                                |
| 21 | MR. FLANNERY: I think even from the responses              |
| 22 | of the defendant during the course of this discussion      |
| 23 | one could determine that there wasn't any great difficulty |
| 24 | for the witness to understand what was going on even       |

There has been a discussion about the extradition agreement which your Honor considered in its

decision of March 26th of this year. The decision of the

District Court is a final decision, but not appealable

until after the time of conviction. That is my under
standing of the law and it obviously serves a purpose,

so that at some point litigation can come to an end and

decisions have to be made.

The Government obviously concurred as reflected in its memorandum of law as compared with your Honor's decision. The Government's understanding of your decision is that the Government will proceed to prove a conspiracy but will be held responsible to a period of time during which period of time the Government will have to prove that this defendant, Mr. Flores, was a continued member of that conspiracy.

THE COURT: Wait a moment, they have to prove a conspiracy during the time provided in the extradition statute.

MR. FLANNERY: That is correct, your Honor.

THE COURT: That is number one, and number two is that as to any testimony or evidence as to anything done outside that period, the jury will only consider that in considering the knowledge and intent of Mr. Flores

during the period covered. That is all. It is not to prove a long conspiracy going back to '68 and I am quite clear on that and I think I said so in the decision.

MR. FLANNERY: I understand. What I am saying is that the Government will prove the existence of a conspiracy during the period from '68 to April of '71.

However, it will have to prove that Mr. Flores was a member of a conspiracy which existed in that long period of time.

before this period is not proving a conspiracy with respect to Mr. Flores, it is purely background. They have got to prove that he was a member of the conspiracy during the period covered in the extradition treaty. That is the period. I mean, I haven't any question about that. If the Government has any question about that, why, that was not my decision.

Any such evidence is purely background and as

I indicated I would instruct the jury very carefully on that.

MR. FLANNERY: My understanding of your decision is that obviously the conversations and the acts that he did with the people that he did it would be admissible, but only to the extent to show his state of mind.

THE COURT: That is right.

MR. FLANNERY: It would have to be shown that

notwithstanding all these acts and conversations and the activity of the agents --

THE COURT: The Government has got to prove that the conspiracy existed during this period.

MR. FLANNERY: During this specific period.

THE COURT: That is right.

MR. FLANNERY: Your Honor, the Government among its requests will ask that the defendant have been shown to have withdrawn, if it appeared that he was a member of the conspiracy, from '68 on.

THE COURT: What is that?

MR. FLANNERY: The Government will ask that the Court charge the jury that it be demonstrated that he withdrew from the conspiracy, too, because my understanding --

way ahead of it. I am not going to so charge. The
Government has got to prove that the conspiracy existed
at some time during theperiod allowed by the extradition
treaty and that Mr. Flores was a member of it and in proof
on those two issues the Government can introduce evidence
as to prior acts on the part of Mr. Flores having a bearing
on his knowledge and intent. It is pure and simple. I
don't know why that is so complicated.

| 2  | MR. FLANNERY: Okay, your Honor, the                          |
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| 3  | Government will therefore during the course of that evidence |
| 4  | be able to demonstrate conversations with others and their   |
| 5  | activities on his behalf. Is that correct?                   |
| 6  | THE COURT: Wait a minute. No, what do                        |
| 7  | the activities of others on his behalf have to do with       |
| 8  | his knowledge and intent?                                    |
| 9  | MR. FLANNERY: When he instructs somebody                     |
| 10 | to do something and they do it and they come back to him     |
| 11 | and they have a conversation with him and they have a subse- |
| 12 | quent conversation                                           |
| 13 | THE COURT: The conversation, but whether they                |
| 14 | carry it out or not, I don't see why that has any bearing.   |
| 15 | Why has that got a bearing?                                  |
| 16 | MR. FLANNERY: It has a bearing to this extent,               |
| 17 | and that is                                                  |
| 18 | THE COURT: How does that refer to his knowledge              |
| 19 | and intent?                                                  |
| 20 | MR. FLANNERY: His activities with others will                |
| 21 | be important in the following way:                           |
| 22 | For example, if he asks someone to pick up heroin            |
| 23 | and that person does go pick it up and then comes back and   |
| 24 | brings it to him                                             |

THE COURT: As far as the jury is concerned,

the first part has bearing on his knowledge and intent if you put in evidence that he told Joe Doakes to pick up some heroin: but if Joe Doakes picks up the heroin in a period outside the extradition period, I can't see that.

MR. FLANNERY: And if he brings it back and describes it to him and describes the course of activity that Flores has been with and friends --

dispute on all that, I can tell you, because although these people don't seem to understand it, I think I am living up to that treaty and I don't see what all the fuss is about, but it is quite clear the object of this charge is whether there was a conspiracy between the dates September 3, 1970 and April 30, 1971 and if there was, whether Mr. Flores was a member of it and the Government has got to prove that those two factors -- and I will allow the Government to say on the basis of prior acts of the defendant, they can consider that and they can consider it only in connection with his knowledge and intent in this period of September 3, 1970 to April 30, 1971.

Offhand I don't see what evidence that Joe

Doakes did something during this perior period following

a talk with Mr. Flores -- I don't see that that has any

bearing particularly on his criminal intent. I think that is what these fellows are worled about because what you are doing then, you are just spilling over the conspiracy and make it difficult for the jury to determine.

What they have got to determine is that a conspiracy existed between these two dates.

MR. FLANNERY: My understanding of the law is that this situation was comparable to those ex post acto cases when prior to a certain date there was not in existence any law which prescribed conduct by certain people.

However, there was a law effective as of a certain date, in this instance September 3, 1970.

You were therefore permitted in such circumstances, without violating any constitutional principle, to demonstrate what had occurred, for example, in terms of the conspiracy prior to that date with the specific instruction that you had to find the individual who was charged with the crime continued to be a member of aforesaid conspiracy existing prior to the effective date of any statute.

It was my understanding that your description of the prior acts and activities of this defendant relating only to his state of mind was a comparable decision

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| 1  | rgrf 22                                                     |
| 2  | to the ex post facto cases.                                 |
| 3  | THE COURT: I am not sure it is comparable                   |
| 4  | at all. I really am not sure of that.                       |
| 5  | Well, now what do you say about these fellows               |
| 6  | want an adjournment I take it. What is the Government's     |
| 7  | position about that?                                        |
| 8  | MR. FLANNERY: Well, your Honor, we don't take               |
| 9  | a position with respect to adjournments. I have noted       |
| 10 | the factors that I think should be taken into consideration |
| 11 | by your Honor. The situation with respect to the time       |
| 12 | it had to prepare this case, the fact that there is         |
| 13 | nothing to indicate the defendant has any problem, the      |
| 14 | frivolity of the motion filed by an attorney not of         |
| 15 | record, but nevertheless a friend of the family.            |
| 16 | I think those factors, if one were to take                  |
| 17 | a position, militate against an adjournment.                |
| 18 | MR. ASNESS: May I briefly be heard, Judge?                  |
| 19 | THE COURT: Yes. What about this, who is the                 |
| 20 | attorney of record? Diller, I guess, isn't it?              |
| 21 | MR. ASNESS: I am, Judge.                                    |
| 22 | THE COURT: You filed?                                       |
| 23 | MR. ASNESS: I am Mr. Diller's partner so I am               |

THE COURT: Have you filed a notice of appearance?

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Mr. Diller.

MR. ASNESS: I don't think I have to, but if the Court wants me to I will.

THE COURT: Yes, I do.

MR. ASNESS: Firstly, addressing myself to the comments made by Mr. Flannery, when he says that these motions are frivolous, or the frivolity of the motions, Judge, I take umbrage at that. I read these motions carefully and I found them interesting and fascinating, but certainly not frivolous.

THE COURT: Lots of things are interesting but frivolous.

MR. ASNESS: That is true. But I find some great issues of international law --

once upon a time. I don't really see any great issues of international law. You do, but I don't.

MR. ASNESS: And Mr. Shaw does and I have read them and I think they are not frivolous.

Judge, furthermore, saying that this defendant has had time to prepare his case, this is an extremely complex case, Judge.

THE COURT: It isn't all that complex. I tried the other defendants, you know that.

MR. ASNESS: I know you have, Judge.

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THE COURT: It wasn't all that complicated.

MR. ASNESS: This defendant has only been here three months and seriously spent most of his time banking his hopes upon this particular issue that is now before this Court and perhaps is not before the Court because a writ of mandamus has been filed and I think in the interests of justice, Judge, he is facing an extremely stiff penalty. It is under the old law. There is a mandatory minimum. I ask that he be permitted to go out and seek these witnesses.

Mr. Flanmery has stated that he has not been told who these witnesses are. If I can have five or ten minutes alone with him, perhaps we can inform the Court who these witnesses are that he seeks.

MR. FLANNERY: Now we are learning for the first time today that no efforts have been made, in other words.

MR. ASNESS: I do not say that. He is making efforts, but he is making them from the Men's Correctional Center and he has an attorney that has been on trial.

THE COURT: Why don't we do this, gentlemen. It is now ten after 10:00. Why don't you talk to your client for a few minutes and then come back and tell me. I would like to know what these problems ar because I

next door.

|          | THE | COURT: | That | must | be | for | his | being | a |
|----------|-----|--------|------|------|----|-----|-----|-------|---|
| witness. |     |        |      |      |    |     |     |       |   |

MR. ASNESS: Furthermore he needs his wife, Estella Gomez Flores and they have been making urgent appeals for a visa for her to come here.

He expects it to be in a couple of weeks.

She will be an important witness in certain aspects of this case.

DEFENDANT FLORES: Excuse me, to correct Mr.

Asness, my wife's visa was granted last Monday, so it is only a matter of time for me to have enough money for me to send for her to come here.

MR. ASNESS: Miss Delia Burgos and, Judge, there is also -- I wrote down secret witness because Mr. Flores does not want the Government to know about this particular individual.

THE COURT: All right.

MR. ASNESS: Judge, allow me to say this.

In talking with Mr. Shaw, Mr. Shaw feels there are
international communications going on now between our
State Department and the Sovereignty of Spain.

THE COURT: The Spanish Government.

MR. ASNESS: Furthermore, Judge, Mr. Flores does not have a lot of money. Many people count other

people's money. Mr. Flores does not have money. His sister has been doing all his leg work for him in this case. He needs this time. Judge, in view of the international complications, in view of the severity of the penalty, in view of the fact that he is in jail, not on the street and derives no real benefit, in view of the fact we are willing to waive any speedy trial issues in this case, I just think in the interests of justice that a dealy in this trial would be a prudent one, Judge.

THE COURT: I will tell you what I will do.

If Mr. Flores will sign -- I would like that signed today -a statement under oath that he is waiving any rights he
may have under the pretrial act or under our rules here,
the six month plan, the three month plan, I will adjourn
this trial. I won't adjourn it for long, though. I will
adjourn it until a week from today or next Tuesday.

MR. ASNESS: That is not going to be sufficient, Judge.

THE COURT: I am going to put it down and you are going to have to tell me that it is not sufficient.

That is what I am going to do and then if you want to you can go up to the Court of Appeals in the meantime with your mandamus petition.

DEFENDANT FLORES: Excuse me, your Honor, could

96 А rgrf 28 we have more like two weeks? This way I can find out 2 exactly when my wife is coming and if I waive my rights 3 why can't I have two months? THE COURT: I want that, number one, but number two, I am not going to give you a long adjournment because 6 I think this creates problems for everybody, really. It 8 certainly creates problems for me. DEFENDANT FLORES: Three years I have been locked up. I haven't been in the street at no time. I have 10 been in Spanish prisons. 11 THE COURT: The unfortunate thing, Mr. Flores, 12 you weren't here whenever it was we tried your co-defendants 13 which was three years ago. 14 DEFENDANT FLORES: That was no fault of mine, 15 your Honor. 16 17 MR. ASNESS: I prefer if you didn't comment on that at this point. 18 Your Honor, I think what the defendant is saying 19 he is incarcerated, he is under a tremendous burden to 20 defend himself and besides the Court's scheduling problems, 21 I see no other problems. I don't know if the Government 22

THE COURT: I am going to put it down for next

has any witness problems or if this trial was delayed

longer than the Court has asked for.

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| 1  | rgrf 29                                                     |
|----|-------------------------------------------------------------|
| 2  | Tuesday, but I will be perfectly willing to have a pretrial |
| 3  | conference this Friday and see where we stand and then if   |
| 4  | there is any good reason for a further postponement I will  |
| 5  | consider it.                                                |
| 6  | MR. ASNESS: Judge, this Friday I will be                    |
| 7  | out of the city. Could it be Monday?                        |
| 8  | THE COURT: Monday is my motion day, do you                  |
| 9  | have any problems?                                          |
| 10 | MR. FLANNERY: No, except if there is going to               |
| 11 | be difficulty with commencing on Tuesday if the             |
| 12 | defense is going to raise some question which your Honor    |
| 13 | is going to consider I do have some people that have        |
| 14 | jobs and have to travel and I would like to have better     |
| 15 | notice than one day.                                        |
| 16 | THE COURT: What is your problem?                            |
| 17 | MR. ASNESS: I will be out of the city,                      |
| 18 | Judge.                                                      |
| 19 | THE COURT: I know it is Good Friday.                        |
| 20 | MR. ASNESS: Could we put it down for Wednesday              |
| 21 | and then have a PTC on MOnday or Tuesday, Judge?            |
| 22 | THE COURT: Will that be agreeable to you?                   |
| 23 | MR. FLANNERY: I will do that. Put it down for               |
| 24 | Wednesday and then we will have a pretrial conference on    |

Monday. I start motions at 9:15, so how about 3:30 on

rgrf

Monday?

Judge?

would like to see what progress has been made, what are the remaining problems. I do think, Mr. Flores, from your point of view, I would like to get this thing over with and I think you would, too, and this is based on your signing a statement today that he is waiving all these rules and it meets with the approval of the Government, a statement under oath.

MR. ASNESS: Fine, Judge. 9:45 on Wednesday,

MR. FLANNERY: I think that would satisfy the speedy trial rules, your Honor.

THE COURT: I want you to be sure that you are satisfied with it and that it is made under oath and it will be made today and filed.

MR. FLANNERY: Could we have a voir dire on the record antedating any filing of the motion so that we can know now so that the period of time is closed so if there are any difficulties, there hasn't been any doubt that the defendant has chosen to whave his rights under the prompt disposition rules.

THE COURT: I want to get that in the file.

I want that in the record and I want you gentlemen to

work it out and I want a statement made under oath on that and it will be in the file today.

MR. FLANNERY: Certainly, your Honor.

Your Honor, could I ask that a copy of that be served on the Government so that I have knowledge that cuch an affidavit has been filed?

to the content of it. I want you to be with them when they do this thing and if there are any questions that you can't resolve, I will resolve them, but I want you to be satisfied under the speedy trial act and all these other things that your rights are protected, certainly.

MR. ASNESS: Your Honor, a minor request. I would like Mr. Flores brought here by the marshals for the pretrial conference.

THE COURT: Yes. Marshal, do that. That is the one advantage to this facility, it can be easily done and I would like him to be here.

MR. FLANNERY: Your Honor, we will be going to my office to work it out.

THE COURT: Yes, and I want this affidavit to be sworn to before a notary public and I want the Government to be satisfied as to the content of it.

Why don't you work that out together right now.

32 1 rgrf MR. FLANNERY: Your Honor, I think we could 2 probably leave the defendant here in the courtroom with 3 the marshal for a short time. No, I think they can take 4 him back to the holding pen until we are ready to have him 5 6 deal with the affidavit, would that be fine? 7 THE MARSHAL: Yes. THE COURT: I am sure we can do that. All 9 right.

(Adjourned.)

Ve) hereby certify that the foregoing a true and accurate transcript, to the bent it my (our) skill and chiling, from my (our) stenographic notes of this plocooding

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UNITED STATES OF AMERICA

73 Cr. 19 (D.B.B.)

ANTONIO FLORES,

Defendant.

GOVERNMENT'S MEMORANDUM OF LAW IN SUPPORT OF ADMITTING EVIDENCE OF EVENTS PRIOR TO SEPTEMBER 3, 1970.

This Memorandum of Law is filed in support of the Government's application to introduce evidence demonstrating the existence of a conspiracy from 1968 to April, 1971, as well as to prove the intent and purpose of the conspirators including Flores.\* See, United States v. Dennis, 183 F.2d 201 (2d Cir. 1950), aff'd. 341 U. S. 494 (1951). The Court

<sup>\*</sup> Needless to say, the Government realizes it wast prove pursuant to the decision of the High Court of Spain dated November 13, 1973, that Flores was a member of the conspiracy from September 3, 1970, to April 30, 1971, and that during that time at least one overt act was taken by one conspirator.

in its decision dated March 24, 1976, cited United States v. Papadakis, 510 F. 20 287, 294 (2d Cir.) cert. denied, 421 U. S. 950 (1975), a conspiracy case, which expressly endorsed the introduction of prior acts to demonstrate a pattern of conduct. Until the pretrial conference of April 12, 1976, the United States Government accordingly but perhaps mistakenly understood the Court's March 26th decision to be consonant with the instant application. However, following that conference, the Government is uncertain what will be admissible at trial and therefore seeks, by way of this motion, a pre-trial ruling whether the Government will be permitted to prove the existence of the entire 3-1/2 year conspiracy and similar criminal acts in the manner, and to the extent herein specifically requested.

## Procedural Back round

On January 1, 1973, Flores was indicted for conspiring from January 1, 1968, to about April 30, 1971, to violate the Federal narcotics law. However, he was then a fugitive and it was not until March of 1973, that he was arrested in Barcelona, Spain. Spain confined him not only pursuant to the American extradition request but also for crimes he committed within the Spanish territory.\* Flores resisted extradition.

<sup>\*</sup> The crimes were possession of a false passport and possession of drugs.

November 13, 1973, decided "with respect to the charges brought against him [Flores] before the Court of the Southern District of New York, the extradition must be granted, but expressly limited to activities from September 3, 1970, to April 30, 1971, all previous activities being excluded." The period was defined in this manner because the only treaty according to the Spanish Court covering the subject crime entered into force on September 3, 1970.\*\* Accordingly, Flores has not been charged by this or any other Federal district for any prior or subsequent criminal activity.

out the sentence imposed by the Spanish Courts until about February 14, 1976, when he was arraigned in the Southern District of New York. Bail was them set at Three Million Dollars. Flores was and remains confined at the Metropolitan Correctional Center.

On Februar, 26, 1976, the defense moved for an order precluding the United States from introducing any evidence of defendant's activities prior to September 3, 1970.

<sup>\*</sup> An official translation by the United States Department of State is hereto attached as Appendix A. See "Decision" at 4.

<sup>\*\* &</sup>quot;Treaty for the Suppression of illegal Traffic of Marcetics Drugs" was signed in Geneva on June 26, 1936.

The Government in its memorandum of law contended that "at trial all of the evidence of the defendant's conspiratorial behavior is admissible against him subject only to the limitation that the jury must find that all the necessary elements of the crime charged existed sometime during the period September 3, 1970, to April 30, 1971." (Emphasis added.) The Court in its decision dated March 26, 1976, said: "The Government may introduce evidence of defendant's prior acts and conversations which may be relevant to defendant's knowledge and intent with respect to Acts committed during this period."

Until April 13, 1976, the Government's understanding of the Court's decision was that the Government would prove the entire conspiracy but be "held responsible to a period of time [September 3, 1970, to April 30, 1971] during which period of time the Government [would] have to prove that this defendant, Mr. Flores, was a continued member of that conspiracy."\* The Court characterized anything that happened before the "relevant period" as "purely background." T. 17. The Government, to clarify its understanding of the Court's position, inquired whether it would be permitted "to demonstrate

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<sup>\*</sup> Transcript (hereinafter "T") of April 13, 1976, robing room conference at 16.

conversations [of Flores] with others and their activities on his [Flores'] behalf." T. 19. The Court said the Government would not be so permitted.

Id. However, the Court did request some explanation for the Government's position, T. 18-20, and expressed some uncertainty concerning the Government's comparison of the instant extradition question to conspiracies in "ex post facto" cases.

On the same day as the robing room conference in which the hereinabove described discussion occurred, the defense did file a petition in the United States Court of Appeals, Second Circuit, seeking to mandamus the Honorable Dudley B. Bonsal based solely on a communication by the Spanish Consul General disapproving this Court's March 26th decision. The mandamus petition was thereafter dismissed on Apirl 15, 1976.\* Further, the United States Attorney for the Southern District of New York has not violated the extradition decision because Flores has not been, nor is it contemplated that he will be, arrested, arraigned, charged of indicated for any activity prior or subsequent to the "Relevant period"; the United States Attorney merely seeks

<sup>\*</sup> Antonio Flores v. Hon. Dudley Bonsal, United States Districe Judge, Southern District of New York, Docket No. 76-3020 (2d Circuit, denied April 15, 1976).

to introduce "evidence" of prior conduct.

The Government, for the purposes, of discussing in an intelligible manner the questions raised by this application will briefly set forth a description of the entire conspiracy including the "relevant period."

### THE CONSPIRACY

During 1968 Edouard Rimbaud, a French citizen living in France, began a correspondence with Joseph Lucarotti, another Frenchman who was then serving a sentence in the Atlanta Federal Penitentiary. After a period of time Lucarotti wrote and asked Rimbaud if he had a source for heroin. Lucarotti stated that he had a buyer for such heroin. He also stated that he, Lucarotti, had an associate. After Rimbaud replied that he had a source for heroin but no money to buy it with, Lucarotti wrote and told him that his associate's wife would give him \$16,000 for the heroin and Lucarotti also gave Rimbaud the address of his associate's wife.

In July, 1968, Rimbaud went to Montreal.

Upon his arrival he sent a telegram to the address
given to him by Lucarotti asking for an appointment.

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During the following weekend two women came to Montreal to see Rimbaud. One was Lillian Santana and the other Delia Burgos who Lilliam identified as the buyer's wife. After a discussion concerning the prospective sale of heroin, the women returned to New York, Shortly thereafter, Lillian Santana returned to Montreal and gave Rimbaud \$16,000. Rimbaud then returned to France and made arrangements for one Gilbert Bordure to bring five kilograms of heroin to Montreal. Rimbaud went ahead to Montreal to meet Bordure upon his arrival. However, when Bordure cleared customs in Montreal he told Rimbaud that he disposed of the heroin in the airport because he thought he was being watched. Rimbaud then went to New York to explain the loss to Lillian Santana. When he explained what happened, Lillian said that that would bother her husband and everybody. During his stay in New York, Rimbaud learned that Lillian Santana's husband was Ralph Santana. Several days later Rimbaud was introduced to the American buyer of the heroin, Antonio Flores. He explained the loss to Flores and agreed to go back to France and try to make good on the loss.

Rimbaud then returned to France and once
he located more heroin he wrote to Flores and told him
to come to France to pick it up. Rimbaud met Flores
in Paris and told Flores that the heroin was not ready
yet. Flores was accompanied to Paris by three other men,
Angel Rivera, John "Buggy" Brown and Herman Rivera.
Flores, Rivera and John "Buggy" Brown went to Avignon
where Rimbaud gave Flores two kilograms of heroin.

Flores returned to the United States in September and instructed Jones to go to Boston and pick up a package of heroin from Rivera and Brown upon their arrival at Logan Airport from France.

Jones and Martinez then returned to New York and delivered the heroin to Flores.

In October or November, 1968, Rimbaud met two producers of heroin in France named Croce and Mari. They said that they knew Rimbaud had an American buyer to whom they would like to sell their heroin. They stated they would send twelve kilograms of heroin to Montreal through a courier, Edmund Taillet. In January, 1969, Rimbaud went to New York and contacted Lillian Santana

and Flores. He told them he was expecting twelve kilos of heroin to arrive in Montreal. Flores and Rimbaud agreed upon a price of \$10,000 per kilogram. Rimbaud then went to Montreal to await the arrival of Taillet with the heroin.

Edmund Taillet, a French nightclub entertainer and television performer, after being recruited as a courier by several French producers of heroin named Marro, Croce and Mari, was introduced to Rimbaud in Marseille. He then secreted twelve kilograms of heroin in musical amplifiers and left for Montreal. He arrived in Montreal and delivered the heroin to Rimbaud.

Once Rimbaud had received the heroin from
Taillet, he notified Flores who came to Montreal. The
heroin was delivered to Flores in two installments with
Flores returning to New York with the first shipment
and then returning to Montreal to pick up the remainder.
Rimbaud received about \$125,000 and returned to France
after depositing the money in a Swiss bank.

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In February, 1969, Taillet was again asked to bring heroin to Montreal secreted in musical amplifiers. This time he secreted twenty kilograms of heroin in his amplifiers and shipped them with the equipment of a famous French bandleader, Johnny Holliday. In March, Taillet arrived in Montreal and again was to meet Rimbaud and deliver the heroin to him. However, while waiting for Rimbaud to arrive, Taillet saw a picture of Rimbaud on the news as one of those arrested in New York in possession of over twenty kilos of heroin. Taillet then delivered the heroin to one Guido Rendel who was sent as a replacement for Rimbaud.

Rimbaud had come to New York prior to his scheduled rendezvous with Taillet in Montreal in March, 1969, to see a friend of his named Christian Hysohion. While in New York, Hysohion and Rimbaud were arrested in possession of heroin on March 9, 1969, and incarcerated at West Street Federal Detention Headquarters. For a more complete discussion of the facts, see <u>United States</u> v. Hysohion, 439 F.2d 274 (2d Cir. 1971).

While in West Street Rimbaud saw Flores who had also been arrested. Flores asked Rimbaud who his French connection was. Rimbaud told Flores that this was not the time to speak of such things. Flores told Rimbaud that he would send Rimbaud a lawyer. Shortly thereafter when Rimbaud was in the courthouse, Horacio

Quinones appeared and stated that he represented Rimbaud. Rimbaud then spoke to Quinones at West Street on several occasions. Quinones Told Rimbaud that Flores wanted to know who the French connection was. Rimbaud refused to tell Quinones because Rimbaud was hoping to raise bail, return to France and continue trafficking in heroin. In order to raise the \$75,000 bail, Rimbaud had Quinones mail some letters to a Frenchman named Jean Dieupart. Rimbaud was trying to arrange for the importation of two kilos of heroin in order to raise the bail. The heroin was to be secreted in the hollow of ski poles. However, the plan failed and the ski poles were seized. For a more complete discussion of the so-called "ski pole affair" see United States v. Hysohion, 448 F.2d 343 (2d Cir. 1971). When Rimbaud learned of the seizure and upon the renewed requests of Quinones for the name of the French connection, Rimbaud agreed to give Quinones the French connection. Quinones also stated that his fee was \$8,500 and that Flores had given him \$1,000 toward it and that Rimbaud still owed him \$7,500. Rimbaud thereafter wrote a letter of introduction to Dieupart asking him to put the bearer in touch with Croce and Mari and instructing Dieupart to give Quinones

\$7,500. This letter was given to Quinones unsealed. Quinones had the address to which the letter was to go. The contents of the letter were also the subject of discussion between Quinones and Rimbaud. Quinones came to see Rimbaud sometime thereafter and told Rimbaud that he and Flores had been to France; that they had seen Dieupart; and that Dieupart had provided \$7,500 which Flores, who was still in Europe, was going to bring into the United States for Quinones. Quinones saw Rimbaud again in October or November. 1969. Quinones said that Flores had given him the \$7,500 and had also stated that he, Flores, had met the French connection. Rimbaud testified that some portions of some of his conversations with Quinones were translated by Hysohion who was present for some of the Rimbaud-Quinones meetings.

During the summer of 1969 Taillet met with the aforementioned French producers of heroin. At this meeting the French producers of heroin introduced Taillet to the man they said would be Rimbaud's replacement. Taillet was introduced to Antonio Flores. Shortly thereafter Taillet went to New York City, where he met Antonio Flores. Flores gave Taillet about \$150,000. Taillet took the money back to France and gave it to the heroin suppliers.

Prior to the meeting in New York with Flores, Taillet had been in Montreal where he met a woman, Noella Richard, who became his mistress. He started this relationship with Noella Richard for the purpose of having her visit him in France and then unbeknownst to her load her car with heroin and have her return to Canada with the car. After returning to France with the \$150,000, Taillet invited Noella to visit France and to ship her car to France so they could tour the countryside. Noella arrived in France with her car. One night Taillet borrowed the car and had it loaded with twenty kilos of heroin. Thereafter Noella returned home and shipped her car back to Canada. When Noella told Taillet that her car had arrived in Canada, Taillet left for Montreal. After the car had cleared Canadian customs Taillet, Noella and two others went for a weekend trip in Noella's car to New York. Taillet met Flores when he arrived in New York. At this time Flores introduced Taillet to Anthony Segura. He told Taillet that in the future Taillet would deal with Segura who would represent his interests. The next day Taillet borrowed Noella's car and Taillet and Segura went to Queens where they unloaded the heroin

from Noella's car. Noella then left for Canada with her car. The next day Segura gave Taillet about \$100,000. A few days later Segura gave Taillet another \$30,000 or \$50,000.

Taillet then, in addition to these trips already described, made about seven more trips to New York. On about three of these occasions he delivered heroin to Segura in New York and on about four of these occasions he picked up money from him in New York.

Then in the Spring of 1971, Taillet was asked to go to New York and pick up the keys to a car that someone named Mosca had taken to New York. Taillet was to deliver the keys and describe the location of the car to Segura and pick up \$1,000,000 from Segura as payment for the 93 kilos of heroin secreted in the car. Taillet came to New York and after some delay passed the keys of the car to Segura. Segura thereafter complained that he had found only 73 kilos of heroin in the car. Segura insisted on taking Taillet to see Flores. Flores and Taillet discussed this development. Then Segura and Taillet located the remaining 20 kilos. Shortly afterwards Segura made a partial payment of \$370,000 which Taillet sent out of the United States via at other courier. Taillet was arrested in New York on april 29, 1971.

### ARGUMENT

#### POINT ONE

THE PRINCIPLE OF "SPECIALITY"
IS CONCERNED EXCLUSIVELY WITH
PROSECUTIONS BY THE REQUISITIONING STATE; NO PRINCIPLE OF
INTERNATIONAL LAW, INCLUDING
"SPECIALITY", PRESCRIBES, NOR
MAY IT PROSCRIBE, A REQUISITIONING STATE'S EVIDENTIARY RULES.

The principle of "speciality" provides that "the requisitioning state may not, without the permission of the asylum state, try or punish the fugitive for any crimes committed before the extradition, except the crimes for which he was extradited." Friedmann, Lissitzyn & Pugh, INTERNATIONAL LAW 493 (1969).

That is clearly the meaning of the Spanish High

Court's decision when it states "with respect to the charges"

the extradition is granted limited to the "relevant period."

Decision at 4; See also Decision at 7. The much heralded

"promise" issued by the United States Embassy gave only "the

specific assurance on the part of the Department of Justice

that Antonio Flores [would] not be prosecuted in the United

States of America for prior infractions or infractions

different than those which are concretely referred to by the

decision portion of the dictated decree . . " (emphasis added.)

No. 136. Verbal Note.\*

<sup>\*</sup> The complete text of the "No. 136 Verbal Note" has been attached as Appendix B.

And in fact, Flores is only being "prosecuted" for what he has been extradited. In ex post facto cases the defendant is not deemed to have been prosecuted for anything but the conspiracy following the effective date of the statute although it is a clear principle of evidence that the existence of the conspiracy prior to the effective date may be shown. United States v. Fino, 478 F.2d 35, 38 (2d Cir. 1973), cert. denied, 417 U.S. 918 (1974); United States v. Smith, 464 F.2d 1129 (2d Cir.), cert. denied, 409 U.S. 1023 (1972); United States v. Ferrara, 458 F.2d 868 (2d Cir.), cert. denied, 408 U.S. 931 (1972); United States v. Binder, 453 F.2d 805, 808 (2d Cir. 1971), cert. Genied, 407 U.S. 920 (1972); United States v. Russo, 442 F.2d 498, 501 (2d Cir. 1971), cert. denied, 40r U.S. 1023 (1972). When prior similar acts are introduced at trial, the accused is not understood to have been prosecuted for those prior acts. United States v. Papadakis, supra. Nor would the admissibility of Flores' acts and conversations and the acts and conversations of his conspirators (or agents) prior to the "relevant period" constitute a "prosecution" for those acts and convers ions merely by admitting those acts and conversations into evidence. The rules with respect to the admissibility of these acts and conversations a 2 rules of evidence which are not properly the subject of international law.

That this is the case becomes self evident upon examining the rules of evidence as applied during the extradition proceedings themselves. Extradition treaties do not usually set

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forth by what evidentiary means the asylum state may conduct its proceeding. In the Spanish Treaty of 1904\* amended by the Geneva Convention of 1936\*\* which included the crimes of narcotics conspiracy, there is no reference to which nation's or what rules of evidence apply to the extradition proceeding itself; it is understood that the rules of the asylum state apply. Mr. Justice Brandeis discussing a similar question in Collins v. Loisel, 295 U.S. 309, 317 (1922), when the United States was the asylum state and Great Britain the requisitioning state, said that one treaty's reference to "evidence of criminality" did not refer "to the character of the evidence or to the rules governing admissibility" (emphasis added). This Circuit has necessarily followed Collins, supra, in Shapiro v. Ferrandina, 478 F.2d 894, 900-905 (2d Cir. 1973), an extradition request by Israel. It follows, a fortiori, that during a trial, subsequent to the extradition proceedings the requisitioning state applies its rules as they apply "to the character of the evidence or to the rules governing admissibility." The contrary proposition, in the context of the instant prosecution, immediately suggests two absurd possibilities: If Flores took the stand, the government would be precluded from impeaching his testimony with felonies

<sup>\*</sup> Malloy, Vol. II; Treaties, Conventions, International Acts, Protocons and agreements between the United States and other powers, 1776-1909 At 1712.

<sup>\*\*</sup> Convention for the Suppression of Illicia Traffic in Dangerous Drugs, 198 L.N.T.S. 299

<sup>\*\*\* 22</sup> U.S.T. 738

prior to September 3, 1970, or any activity by the defendant following April 30, 1971, for example, flight, would be inadmissible on the question of defendant's consciousness of guilt. Both impeaching a witness with prior convictions and demonstrating flight with appropriate instructions are principles of evidence well established.

Thus, the government contends by the fact it has not and does not intend to charge by complaint or indictment Mr. Flores for his acts prior to September 3, 1970, it is not "prosecuting" him. The Government seeks by this forum's applicable rules of evidence to introduce the acts and conversations of Flores and his conspirators (or agents) under other well established principles of law discussed, infra, in Points Two and Three.

## POINT TWO

DECLARATIONS OF CO-CONSPIRATORS, MADE OUTSIDE THE PERIOD OF THE CONSPIRACY, "EFFECTIVELY" ALLEGED IN THE INDICTMENT, ARE ADMISSIBLE AGAINST ALL CONSPIRATORS IF IN FACT THE CONSPIRACY EXISTED AT THE TIME OF THE DECLARATIONS.

To prove the conspiracy following September 3, 1970, the Government seeks to offer at trial evidence of various acts and conversations of defendant Flores and his co-conspirators which took place prior to that date. As has been fully set forth earlier, the evidence reveals that the conspiracy in this case

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did not start on September 3, 1970, but actually much earlier in 1968.

There is no question that statements of a conspirator during the course of and in furtherance of a conspiracy are admissible against all other members of the conspiracy to prove the existence of the conspiracy. Fed. Rule Evid. Section 801(d)(2)(E).

To convict the defendants of the conspiracy charged in this case, the Government must prove that the conspiracy existed during the period between September 3, 1970, and April 30, 1971 ("hereinbefore referred to as the relevant period"). Although it is required that the Government satisfy the jury of the existence of a conspiracy within the "relevant period", the Government is not barred from proving activities done either before or even after the stated "relevant period" to show the existence of he conspiracy alleged and the membership of the defendant Flores therein. In short, the time period "effectively" alleged in the indictment as a result of the Spanish decision governs to the extent that it requires the Government to prove the conspiracy existed during the "relevant period," but it does not restrict the Government's evidence co activities only within that period.

In <u>United States</u> v. <u>Dennis</u>, 183 F.2d 201 (2d Cir. 1950), aff'd., 341 U.S. 494 (1951), defendants were charged as members of a conspiracy alleged in the indictment to have been from 1945

to 1948. The Government offered evidence at trial of a host of declarations made prior to 1945 by the defendants. Making it absolutely clear that the declarations of a co-conspirators, made outside the period of the conspiracy alleged in the indictment, were admissible against all conspirators if in fact the conspiracy existed at the time the declarations were made, Judge Learned Hand stated:

"There can be no logical reason for limiting evidence to prove that the defendants were in a conspiracy between 1945 and 1948 to the period of the charge; if they were in the conspiracy earlier, declarations of any one of them or if any other person acting in concert with them are as competent as those made within the period laid. 183 F.2d at 231.

In a more recent discussion of this same question,

Judge Joseph Lord reaffirmed that for purposes of admitting

declarations of co-conspirators "[t]he 'pendency' of the

conspiracy relates to the period during which the conspiracy,

in fact, existed and is not restricted to the period charged

in the indictment." United States v. Barrow, 229 F.Supp.

722, 731 (E.D. Pa. 1964), aff'd., 363 F.2d 62 (3rd Cir. 1966),

cert. denied, 385 U.S. 1001 (1967). See also, United States

v. Ledesm, 499 F.2d 36 (9th Cir. 1974.).\*

<sup>\*</sup> The fallacy of assuming that the period stated in the indictment governs the admissibility of declarations of co-conspirators is further illustrated by the principle that, if a conspiracy is shown to exist, declarations are admissible even in the absence of a conspiracy charge in the indictment. See, e.g., United States v. Zane, 495 F.2d 683 (2d Cir. 1974).

Further, as a matter of law, a conspiracy is presumed to continue until the arrest of the central members of the conspiracy. E.g., Grunewald v. United States, 353 U.S. 391, 401-02 (1957); Krulevitch v. United States, 336 U.S. 440, 442 (1949). In this case Antonio Flores was not arrested until March of 1973 when there were other fugitives outstanding. Arguably, in the absence of any evidence that the conspiracy terminated before 1973, it must be considered to have continued through to that time and declarations of conspirators made in 1973 in furtherance of the conspiracy are also admissible at trial.

Based on <u>Dennis</u> and progeny, the Government therefore seeks to introduce this evidence as above outlined.

# POINT THREE

EVEN IF THE CONVERSATIONS AND ACTIVITIES AMONG CONSPIRATORS ARE NOT ADMISSIBLE AS "IN FURTHERANCE OF" A CONSPIRACY, THEY ARE ADMISSIBLE UNDER THE LEGAL PRINCIPLE PERMITTING PROOF OF OTHER CRIMES, TO WIT, A PRIOR JOINT VENTURE, TO IMPORT HEROIN FROM FRANCE TO THE UNITED STATES.

It is clear that, assuming <u>arguendo</u> the conspiracy only commenced on September 3, 1970, contrary to the evidence, proof of defendant Flores' and his co-conspirators role in the conduct of a similar joint venture to import heroin prior to the commencement of the conspiracy would be admissible to establish that the

conspiracy in fact was in existence and was participated in by Flores. See Anderson v. United States, 417 U.S. 211, 219 (1974); <u>Lutwak</u> v. <u>United States</u>, 344 U.S. 604 (1953); <u>United</u> States v. Super, 492 F.2d 319, 323 (2d Cir. 1974); United States v. Nathan, 476 F.2d 456, 459-60 (2d Cir. 1973). Such activity antedating the conspiracy constitutes evidence establishing that Flores together with the same conspirators during the relevant period committed acts similar to the acts which are charged against him. In United States v. Papadakis, 510 F.2d 287, 295 (2d Cir. 1975), Judge Gurfein said on behalf of the panel, "The charge of conspiracy to commit criminal acts always requires proof of a course of conduct that will circumstantially prove the corrupt agreement. There is no more convincing proof to a jury than that of a pattern of conduct which unfolds before their eyes." Thus did the court uphold as probative the admission of prior acts revealing "a pattern of conduct engaged in by Novoa and others 'of which the crime charged was a part.'" Id.

Of course, such similar acts are not direct proof of the conspiracy in the same sense as proof of acts committed within the period of the conspiracy, but it is admissible to establish that defendant and his co-conspirators had the same relationship and association in the period preceding September

3, 1970, as is charged against him for the period following
September 5, 1970. As such, it is probative of the existence
of the conspiracy and defendant Flores membership in that
conspiracy. See United States v. Super. supra; United States
v. Nathan, supra; United States v. Garelle, 438 F.2d 366
(2d Cir. 1970); cert. dismissed, 401 U.S. 967 (1971). See
also, United States v. Miller, 478 F.2d 1315 (2d Cir. 1973);
United States v. Persico, 425 F.2d 1375 (2d Cir.), cert.
denied, 400 U.S. 869 (1970)\* The evidence of such prior
similar acts is freely admissible for a number of other
purposes. clearly pertinent to the instant case, such as proof
of motive, opportunity, intent, preparation, plan, knowledge,
identity or absence of mistake or accident. Fed. Rule Evid.
404(b).

It is also clear that the acts and declarations of an agent (or agents) of Flores are admissible in evidence against Flores where a joint undertaking or enterprise is shown in fact to exist among him and other parties. United States v. Annunziato, 293 F.2d 373, 380 n.4 (2d Cir.), cert. denied, 368 U.S. 919 (1961) (Friendly, J.) and United States v. Pugliese, 153 F.2d

<sup>\*</sup> These cases involve both proof of criminal activities preceding and following the criminal activities for which the defendants were indicted and on trial. It is settled law that the sequence of the criminal activities sought to be proved is of no consequence. Rather, admissibility of other criminal activities, whether committed before or after the crimes charged in the indictment, is controlled by a determination of the similar nature and proximity of the particular criminal activities. See United States v. Rodriguez, 470 F.2d 587, 590 (5th Cir. 1973); United States v. Smith, 343 F.2d 607, 609 (2d Cir. 1965).

497, 500 (2d Cir. 1945) (L. Hand, J.). See United States v. Miller, 246 F.2d 486 (2d Cir.), cert. denied, 355 U.S. 905 (1957). The basis of such admissibility was stated by this Circuit in United States v. Olweiss, 138 F.2d 798, 800 (2d Cir. 1943), cert. denied, 321 U.S. 744 (1944); the admission of such a statement" ... is merely an incident of the general principle of agency that the acts of any agent, within the scope of his authority, are competent against his principal." Compare, Fed. Rule Ev. Section 801(d)(2)(D).

To be admissible, the declaration must, of course, have been made within the scope of the agent's authority and in furtherance of, and during the course of, the joint venture engaged in by the declarant and Flores. <u>United States</u> v.

<u>Marchisio</u>, 344 F.2d 653, 668 (2d Cir. 1965); <u>United States</u> v.

<u>Sapperstein</u>, 312 F.2d 694, 698 (4th Cir. 1963). But where the conditions of admissibility are met, the agent's declarations are, of course, binding against the defendant Flores. <u>United</u>

States v. Marchisio, <u>supra</u>.

Moreover, this rule of law has been embodied in the new rules of evidence. Fed. Rules Ev. 801(d)(2)(E)\*.

<sup>\*</sup> The Senate Judiciary Committee Report 3-1277 stated that "While the rule [801(d)(2)(E)] refers to a co-conspirator it is this committee's understanding that the rule is meant to carry forward the universally accepted doctrine that a Joint Venturer is considered as a co-conspirator for the purposes of this rule even though no conspiracy has been charged. United States v. Rinald; 393 F.2d 97, 99 (2d Cir.), cert. denied, 393 U.S. 913 (1968); United States v. Spencer, 415 F.2d 1301, 1304 (7th Cir. 1969)."

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### POINT FOUR

FAILURE TO PERMIT THE GOVERNMENT TO PROVE THE ENTIRE CONSPIRACY (OR PRIOR JOINT VENTURE) AS ARGUED IN POINTS TWO AND THREE SUPRA, WILL SIGNIFICANTLY DISTORT THE FACTS OF THE CONSPIRACY AND IMPAIR THE CREDIBILITY OF PROSECUTION WITHNESSES THEREBY UNFAIRLY PREJUDICING THE GOVERNMENT'S CASE.

If the Government's understanding of the Court's present holding is correct that the Government's witnesses may only speak about acts and statements of the defendant Flores alone, then relevant properly admissible evidence, see Points Two and Three, supra, explaining the entire context of Flores' action as well as the result of his statements will be excluded. Further, relevant and corroborative testimony by other witness will be excluded. The result will be not illumination but very likely confusion for the jury, and it is difficult to say to whom the prejudicate will accrue. It is clear that a witness testifying in this restricted manner will give to the jury a false impression of the events.

Referring to the factual description of "the conspiracy" in order to illustrate false remarks, it is clear that by commencing Rimbaud's testimony fints with his conversation with Flores in August of 1968 will confuse the jury as to Flores' role for without more testimoney, a clear undersanding of who Lillian Santana was and what her role was vis a vis Flores will be unavailable. Further, without Rimbard conversing with Felix Olive, his french partner, as they seek a source of heroin it will appear the heroin is lost on the one hand in a mysterious

fashion but, produced on the other hand "Deus ex machina."

Flores, the court will recall, is disappointed on his September 1968 visit to France; he only gets 2 kilos for all his trouble. Why and how heroin later finds its way to Montreal in about January of 1969 and why Flores is interested in buying it then is not comprehensible without Rimbaud's conversations with the Corsicans in October of 1968. The Corsicans provided a new larger and reliable source; that is the significance of that meeting.

The court will recall Taillet is a courier for the Corsicans. However, since Taillet does not see or speak to Flores on his first Montreal delivery in about January of 1969, will he be permitted to testify how he delivered the heroin to Rimbaud for Flores? Taillet's testimony is obviously an important element of his trip. It establishes a pattern for future deliveries to Flores and Flores' agent, Segura, a pattern which is followed up to and including Taillet's April 1971 delivery of the Citroen. It defines Taillet's position in the conspiracy, a position which does not significantly alter through the "relevant period."

When Rimbaud was arrested in March of 1969, the testimony will appear absolutely incredible and the proceedings will likely be incomprehensible to the jury if Rimbaud can not testify about his conversation with the attorney Quinones, whom Flores promised to send to Rimbaud and whom Flores did send. Quinones is the agent both for Flores and Rimbaud. It is through Quinones as agents for both that Flores' French connection remains intact.

Of course, it is necessary for Taillet to testify about his dealing with Segura, Flores' agent, after Flores introduces Taillet to Flores. Segura's function prior to the "relevant period" is relevant to Flores' state of mind and position in the conspiracy during the "relevant period."

Reading through the factual description, "the conspiracy", supra, no doubt suggests to the court other difficult areas which will arise prior to the "relevant period" if statements of co-conspirators or agents are not admitted.

Any objection as to the relevance of the statements and acts of these other participants has been discussed above in the other points. These instant remarks about the evidence itself are merely made to concretize the legal principles above discussed.

### CONCLUSION

Therefore, the Government moves to introduce evidence demonstrating the existence of the entire conspiracy from 1968 to April, 1971 including the statements and acts of conspirators "subject to connection" to prove the intent and purpose of the conspirators including Flores. In the alternative, the government

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seeks to introduce evidence of a prior joint venture including the acts and statements of agents (or joint venturers),

The Government respectfully submits that any other course will unfairly prejudice the Government's case.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for the United States of
America.

JOHN P. FLANNERY
Assistant United States Attorney
- Of Counsel -

Appendix A: Decision of the High Court of Spain regarding the extradition of Antonio Flores dated November 13, 1973.

JF:mr

Appendix B: No 136. Verbal Note

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|         | THE     | CLERK: | United | States | of | America | against |
|---------|---------|--------|--------|--------|----|---------|---------|
|         |         |        |        |        |    |         |         |
| Antonio | Flores. |        |        |        |    |         |         |

MR. FLANNERY: The government is ready, your Honor. John Flannery representing the government. Sitting with me at counsel table is a student assistant of mine, Edward Mankowelcz.

THE COURT: We scheduled this case for trial I think beginning Wednesday morning.

MR. FLANNERY: That's my understanding.

MR. ASNESS: Good afternoon, your Honor.

There are several matters I would like to bring to the Court's attention, the first one being that it is obvious that the indictment would have to at least be severely redacted in this case to conform with the proof at trial, but more importantly, Judge --

THE COURT: I think I have ruled on that and I think my ruling is quite clear.

MR. ASNESS: As far as the redaction of the indictment, Tudge?

That is easy. Let's hear the proof.

MR. ASNESS: Allow me to say this. The defendant's position in this is that, number one, this indictment should be in fact dismissed.

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| 2  | THE COURT: You have mentioned that and I am not              |
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| 3  | going to dismiss it.                                         |
| 4  | MR. ASNESS: I don't think I ever did. I don't                |
| 5  | recall ever mentioning any of these things, either redaction |
| 6  | or dismissal.                                                |
| 7  | THE COURT: What's your point on the dismissal?               |
| 8  | MR. ASNESS: On the dismissal, Judge, the                     |
| 9  | defendant is entitled to go to trial and the vehicle for     |
| 10 | that would be a proper indictment based upon legally compe-  |
| 11 | tent and proper evidence against him.                        |
| 12 | THE COURT: I ruled on that, didn't I?                        |
| 13 | MR. ASNESS: Judge, I am not aware of any rulin               |
| 14 | on that.                                                     |
| 15 | THE COURT: I ruled what was to be produced at                |
| 16 | he trial.                                                    |
| 17 | MR. ASNESS: I am not taking issue with that,                 |
|    |                                                              |

your Honor.

THE COURT: Then don't take issue with it.

MR. ASNESS: I am saying something totally different. The testimony that was presented back in 1973 against this defendant, at least 90 or 95 percent of it I suggest to the Court could not be presented under the Court's present ruling.

THE COURT: I know. I don't know about the

percentage, but it won't be.

MR. ASNESS: I understand that, however, there is a problem. The defendant has a right to go to trial on an indictment which at least in some way conforms to what the proof will be on trial. More importantly, prosecutors have argued that the grand jury is not a rubber stamp.

I respectfully submit to this Court that if this case were represented today under the Court's ruling, your Honor, perhaps a grand jury would not even indict the defendant in this particular case.

MR. FLANNERY: Your Honor, that's absolutely irrelevant to the question before the Court.

that, and I don't know why I have got to keep doing it.

The government has got to establish a conspiracyand that the conspiracy continued from September 3, 1970, and it ran to not later than April 30, 1971, which is the date in the indictment. I don't think there is any problem in that.

MR. ASNESS: Your Honor is denying my application?

THE COURT: That's right.

MR. ASNESS: On the redaction, besides just redacting the dates at the beginning of count 1, your None, we have certain other problems inherent in this indictment.

THE COURT: I may not even give the jury the

indictment, so why are you worrying so?

MR. ASNESS: I would just like to protect the record. We have eleven overt acts here, none of them perhaps admissible.

THE COURT: I know.

MR. FLANNERY: Your Honor, that is a question of sufficiency of evidence.

worry about this. On the overt acts, offhand I would think that overt acts, by even the defendant or somebody else that didn't occur during the period of the conspiracy between September 3, 1970, to April 30, probably won't come in.

Sure, I don't know why you are worrying about all this.

MR. ASNESS: Your Honor, we also have the names of defendants that have been acquitted. I am just worrying about this being read to the jury.

MR. FLANNERY: That's irrelevant as a matter of law.

THE COURT: Please. Really, you are just wasting time. I am not worrying about any of these things.

MR. ASNESS: Your Honor, there is another problem I wish to bring to the Court's attention. Again, your Honor, I have to protect the record here on behalf of Mr. Flores.

THE COURT: You are spending an avful lot of time and you have been protecting it about "ix or seven times. What's your next point?

MR. ASNESS: It has come to my attention that this indictment was the first indictment, which was filed January of 1973. I am referring to the indictment that the government intends to bring Mr. Flores to trial on, 73 Cr. 19. However, your Honor, that indictment has been superseded by another indictment filed in October of 1973, namely, 73 Cr. 983, Judge.

THE COURT: I haven't seen that. Is there such an indictment?

MR. FLANNERY: Yes, there was, but the government is going to go to trial on the indictment. The defendant was extradited and can do nothing else.

THE COURT: That answers your question, which I take it is this indictment which I have in my hand here,
73 Cr. 10.

MR. FLANNERY: That's correct. That's the one the defendant will go to trial on.

record hat the second indictment I mentioned, the later indictment, is almost verbatim, the same as the first one, and I am suggesting that in effect it was superseded and that

the first indictment is a nullity, your Honor, that this defendant has been extradited on an improper indictment.

He should have been extradited on the superseding indictment.

THE COURT: That's denied. What's the next one?

I have a motion here, but I didn't get a brief.

I got a motion from somebody, but there is no brief attached to it, no law, no facts. It asked for a dismissal because of another indictment in New Orleans which names entirely different people. That has no bearing. What's the besis for that?

MR. SHAW: Well, your Honor, there are two points in that.

THE COURT: What's the basis for it?

MR. SHAW: The first point that was brought up is the double jeopardy issue.

THE COURT: How could there be double jeopardy?

This is talking about completely different people, and if

it exists, a completely different conspiracy. It has

nothing to do with it all.

MR. SHAW: It fell within the same time period.

THE COURT: No, there is nothing to that at all.

MR. SHAW: Your Honor, the second and more important point is, it has come to the attention of the defendant and it's up to me to place before the Court the

fact that there is going to be an attempted identification by a cooperating government witness who has utilized several photographs on information and belief to identify the defendant. The procedures that were utilized on information and belief are highly irregular.

THE COURT: I guess this is a hope. What about this identification? I will ask the government about it.

MR. FLANNERY: Apparently the information and NO belief can be said more specific than that. There is nothing available to the government that indicates there was, for example, a showup or that there was any kind of improper identification procedure employed, and if the defense can submit an affidavit or representation on the record of some procedure, then perhaps a hearing would be required.

THE COURT: They said they don't know. All this is is a matter of hope, I know. I suppose you will have a witness that will identify the defendant, I take it.

MR. FLANNERY: I expect there will be several witnesses, your Honor, that will identify the defendant.

THE COURT: I will leave that go to the trial and when the witness is called, if you think you have got some basis of any arrangements that I should have a separate identification hearing, I will consider it at the time.

Is there anything else?

rgas 9 1 MR. ASNESS: May we have a moment to confer, Judge. 3 THE COURT: Yes. 4 (Pause) 5 6 MR. ASNESS: Just very briefly, your Honor, the government has just now, a matter of moments ago indicated 7 8 to me, although Mr. Flannery did call me earlier today to tell me that there would be certain statements that he 10 intended to introduce at trial allegedly purported to be made. 11 12 THE COURT: I got a copy of that letter. 13 MR. ASNESS: I just got it. I would ask, Judge, 14 that we have a hearing on the admissibility of these statements. I don't think that this letter indicates enough 15 for this Court to decide on the basis of an ex parte letter 17 whether or not these statements are voluntary, proper, whether or not rights should have been given, were given, 18 and I think hearings should be had on these. 19 THE COURT: The government wrote this letter, 20 number one, here, at the time of his arrest Mr. Flores gave 21 22 the officers a statement stating that he fled the United States to avoid prosecution. Is that in writing? 23

MR. FLANNERY: There is a statement by the defendant in writing.

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THE COURT: Has he seen it?

MR. FLANNERY: It's being flown at this very moment from Spain to the United States, and he certainly will see it. In fact, I may be able by phone to give counsel later this evening an oral account of what that statement is in more detail.

THE COURT: If he wants to see a written statement, he is entitled to see that.

MR. ASNESS: As to number 2, there were no warnings pursuant to Miranda although the government alleged that he has been arrested seventeen times, et cetera,

I don't think that that allegation alone negates --

that. All I hear is talk. I would like to get some law as to what the effect of Miranda is on that statement. If you give me some law on it, I will consider it before I let it in.

MR. ASNESS: All right, let's see what else we have.

THE COURT: Then there are some statements made around January 13, 1976. The statement about it was lucky that they caught him when they did because he intended to change his identity with false papers, is that statement in writing?

MR. FLANNERY: No, your Honor, as reflected in

the footnote, what is in my letter is a summary of what it
is my understanding the defendant did say on that date
to an agent of the Drug Enforcement Administration. There is
no written statement.

THE COURT: Are you going to produce the agent?

MR. FLANNERY: Yes.

THE COURT: When the agent is produced, I will consider that.

MR. ASNESS: Your Honor, the defendant again requests me to ask this Court for a continuance prior to trial. Without reiterating, Juge, what we already stated --

THE COURT: I gave you a continuance last week

for two reasons: one, because Mr. Flores had an accident

in the Metropolitan Correctional Facility, and the second

reason was that he wanted to contact some witnesses. I think

I have given him time to do that. What's the reason now?

MR. ASNESS: Your Honor, Mr. Flores stated to me basically there are two witnesses, perhaps more, one of them located in San Francisco, and some attorneys from France that he is most interested in having present at this trial. It's the first I am aware of either the San Francisco or the French situation. Again, your Honor, I can only reiterate, Mr. Flores' position is that he has signed a waiver, duly executed --

THE COURT: I know that.

MR. ASNESS: -- and negotiated with the United States attorney. He is not attributing any delay to the United States attorney or to this Court. He is asking this Court for a delay in what he considered to be his own interests and perhaps the Court will consider it to be the interests of justice based upon the stiff penalties, the fact that he has been out of the United States for five years, he has only been there three months, Judge, and he has directed, unfortunately, all his efforts into the Spanish situation and now realizing that he is going to go to trial in this case, Judge, he is asking for a little bit more time in order to prepare this defense.

MR. FLANNERY: Your Honor, if I may address myself to a couple of points made by defense counsel.

First of all, the waiver was not negotiated.

THE COURT: I know. I said I wasn't going to postpone it from last week without the waiver in any event.

MR. FLANNERY: Secondly, the defendant at this time had three months and an additional week to obtain these witnesses, and it has been represented to me by counsel that based on the information that he has been given by the defendant, that he intends to not call any of the people that has been requested by him.

1 THE COURT: That's up to him. He can call them or not as he decides on that. 3 MR. ASNESS: Your Honor, it is difficult. I really 4 don't know what co say to this Court. I know the Court is 5 trying very hard to act expeditiously and also has done so. 7 This is not a fraudulent delay, Judge. There is nothing

that he can gain by staying in another couple of weeks and working on his defense, Judge, except properly prepare his case. As far as I am concerned, Judge, I am ready for trial. My defendant is not.

THE COURT: I don't know how anybody can reach any lawyers in France that he is talking about.

MR. ASNESS: He has already contacted them, Judge. It is just a question of having them come over there or working out some way of getting statements from them, and as far as --

THE COURT: How long will the government's case take to try, do you think?

MR. FLANNERY: It will take approximately four or five days, your Honor, I anticipate.

THE COURT: I don't see how it will take that long because the last time I had this it was a much longer period, and that was about four days.

MR. ASNESS: And that was about six defendants,

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now.

or more.

THE COURT: I wouldn't say that, but there was a longer period involved and I don't know why it should take all that time.

MR. ASNESS: Judge, this case should take two days.

I am supposed to go up to Cambridge, Massachusetts, on Friday, I really should do that, to the Visiting Committee of the Harvard Law School, and I can't sit on Monday because that's my motion day and Equity Functing and a lot of things. I want to find out from the government how much difficulty it would cause the government if we started this next Tuesday morning instead of on this Wednesday.

MR. FLANNERY: Well, your Honor, as I indicated --

THE COURT: Would it cause you a lot of trouble?

MR. FLANNERY: There are witnesses en route right

I think we ought to go ahead. I don't want to inconvenience the government -- I don't want to inconvenience anybody, really, but I think we better go ahead and get these people over here and if they want to testify on the defense side,

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there will be time for that, because I won't sit on Friday and Monday, so he will have a little more time.

MR. ASNESS: We will only go Wednesday and Thursday, and then over to next Tuesday?

THE COURT: That is right.

I think we better go ahead on that basis. Any other problems that come up during the trial, of course, I will be glad to hear from you and we can take them up, but I think we should go to trial.

MR. FLANNERY: Your Honor, I have a couple of matters I would like to take up with the Court.

THE COURT: What is that?

MR. FLANNERY: I have filed this morning with the Court a motion to introduce evidence that the government had previously misunderstood your ruling to mean it could introduce that evidence.

I am restricting you to evidence relating to this conspiracy in this time period, and I also said I would let in evidence as to acts of the defendant which have a direct bearing on his knowledge and intent at the time he committed the acts during the conspiracy period. I don't think I can be any clearer than that.

MR. FLANNERY: Your Honor, the problem with the

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| 1  | rgas 16                                                       |
| 2  | ruling and my understanding of it is that I do not under-     |
| 3  | stand to what extent the statements of gents or co-conspira-  |
| 4  | tors depending upon the applicable provisions would be        |
| 5  | THE COURT: Oh, no. Unless they have a direct                  |
| 6  | bearing on the defendant's intent, I don't think they are     |
| 7  | admissible.                                                   |
| 8  | MR. FLANNERY: Well, the acts of the defendants                |
| 9  | are acts not done in isolation, but in relation to others.    |
| 10 | THE COURT: I know, but I am limited by a treaty               |
| 11 | here, aren't I? You agree; you concede that?                  |
| 12 | MR. FLANNERY: I will explain my understanding                 |
| 13 | of how the treaty applies.                                    |
| 14 | THE COURT: I know, but I explained my under-                  |
| 15 | standing in the memorandum I filed.                           |
| 16 | MR. FLANNERY: The doctrine of speciality, your                |
| 17 | Honor, restricts this country to prosecute the defendant only |
| 18 | for the crime following September 3, 1970.                    |
| 19 | THE COURT: That means in this case a narcotics                |

ics conspiracy between these dates, is that right?

MR. FLANNERY: That's correct, your Honor.

THE COURT : Okay .

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MR. FLANNERY: But the government is not precluded under the rules of evidence --

THE COURT: They are precluded under the treaty.

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We are not talking about rules of evidence, they are
precluded by the treaty.

MR. FLANNERY: But the treaty does not cover the rules of evidence.

THE COURT: The extradition treaty applies only to crimes committed after September 3, 1970.

MR. FLANNERY: That's correct, your Honor.

Prior acts do not constitute crimes, they constitute

evidentiary questions.

and I will have to say to you that if you think that is the law, you better go up to the Court of Appeals.

MR. FLANNERY: Let me just restate my understanding of the law.

THE COURT: Do you want to do that?

MR. FLANNERY: Let me state my understanding of the law before I come to such a juncture. I cannot make such a decision alone without discussion, but my understanding of the law was that if a bomb were mailed prior to September 3, 1970, in a bombing conspiracy, and the government was restricted to proving the conspiracy after September 3, 1970, and the bomb went off after that effective period --

THE COURT: That's not this case.

MR. FLANNERY: The government would be permitted to prove the mailing prior to --

THE COURT: That's not this case.

MR. FLANNERY: This case is similar.

THE COURT: This case charges a continuing narcotics conspiracy going back to 1968.

MR. FLANNERY: And the conspiracy and the manner in which the relations between the parties Flores, Rimbaud, Taillet, Segura was determined in the pre-September 3, 1970 period.

THE COURT: You can ask Taillet and Rimbaud how long they have known Flores. Sure, they have known Flores a long time. But what is not encompassed in this thing is something that you say Flores may have done prior to September 3, 1970, which was other than somebody else delivering some narcotics.

MR. FLANNERY: Well, if Flores, for example, in June of 1969 introduces Taillet to Segura and says, Okay, now work with Segura for me" --

THE COURT: Who says that?

MR. FLORES: If Flores says to Taillet, "You work with Segura as my representative," the government's position is that it's admissible. Not only that statement is admissible, but that Segura continues to deliver and

2 receive --

THE COURT: It's admissible for the purposes of showing Flores' knowledge and intent at that time, sure, but not all the acts that went on after that.

MR. FLANNERY: It is the government's position that it would be admissible to show how Segura subsequently did receive heroin and pay cash to Taillet --

THE COURT: No, because that is a crime outside of the period of the indictment.

MR. FLANNERY: It's a prior act done at the behest of this man who was the boss of Segura.

THE COURT: I am afraid I don't agree with that.

I am sorry, I just don't agree with that and if you think

I am wrong, would you want to go to the Court of Appeals
on it?

MR. FLANNERY: I tell you I would have to confer with my office before I could make such an appeal.

THE COURT: They wanted to adjourn the trial and if you go to the Court of Appeals, it will probably take that, but I thought I was quite clear in that memorandum, and I don't understand what all this fussing is about.

MR. FLANNERY: The Court in Papadakis is -

THE COURT: I have had these trials and I have allowed a lot of things in the way of background, but on this

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

ore I am faced with an extraction treaty which as I recall the conclusion is rather superior to all of these things.

MR. FLANNERY: Your Honor, the constitution
says the treaties are the supreme law of the land when
entered into by the United States and the decision is binding
upon this Court for the purposes of prosecution. That's
absolutely correct. However, the rules of evidence are those
rules in the asylum state or in the forum where the trial is
conducted, and I pointed to in my memorandum Justice
Brandeis' decision in Collins v. Lewoizel, in which case the
Court then included that the rules of evidence applicable
at even an extradition hearing where the rules of the
asylum state, that is to say —

THE COURT: This is not an extradition hearing.

MR. FLANNERY: But a fortiori, if at an extradition hearing, when you are extraditing from your country to another foreign national the extraditee, the person being extradited, it follows that certainly in the case where within the asylum states the courts, the laws of evidence which apply, are those laws of evidence of that form and not of other nations. And the laws of this nation are clear that both prior acts and admissions and statements of co-conspirators in furtherance of either a conspiracy or a joint venture are admissible during the course of

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proving prior similar acts or the existence of a conspiracy prior to an effective date of the conspiracy.

point of view on that and the problem here is obviously if you went through a trial such as I went through in this hing in '73 with a jury it would be perfectly ridiculous. The spillover would be obvious, and I am not going to allow that to happen. I assume you have got evidence on the period from '70 to '71. I don't see why it's necessary.

MR. FLANNERY: Well, vour lonor, the evidence that we are discussing, as I understand your ruling, is almost entirely restricted to admissions.

THE COURT: No. As I recall the testimony at the prior trial, a lot of things happened in '70 and '71 which people could testify to and did.

MR. FLANNERY: I am talking about the pre-September 31, 1970 period.

THE COURT: No, it is not at all, it is statements that the defendant made and his course of conduct has a bearing on his knowledge and intentions during the period which the activity is being tried, which is starting September 3.

MR. FLANNERY: But one of the probative values of evidence prior to the September 3 date is that prior to

that date it establishes a relationship between Flores and others, and that relationship is only made clear when for example Flores' instructions to another are followed and carried out in conversations, not just with Flores, but with other people. I mean, it is relevant to show how the conspiracy exists and continues --

show that the defendant had intentions of engaging in the narcotics business and that during this period he did things with Taillet and kimbaud and these other fellows that indicated that he had intentions to go into it, but what he actually did in '68 or '69, the X kilos of heroin or whatever it was, that hasn't any bearing.

MR. FLANNERY: It does, your Honor, and it has the following probative value.

THE COURT: Oh, no.

MR. FLANNERY: I am sorry if the word is distressing, but I think it is relevant because I think when one considers whether or not to admit acts prior to September, one has to decide whether it is probative --

THE COURT: Of what?

MR. FLANNERY: It is probative of how there is an increasing quantity of heroin.

THE COURT: You are trying to prove there was a

2 conspiracy starting on September 3, 1970, isn't that right?

MR. FLANNERY: It is relevant to proving that because one can only understand how on one occasion 93

5 kilos worth \$100 million is distributed --

THE COURT: No.

MR. FLANNERY: That's the April '71 delivery, your Honor.

THE COURT: If it's in the period, that's fine.

MR. FLANNERY: That is in the period and there is no way one can understand how such a large delivery can refer unless that grows from 20, 10, 12 and 2 kilos.

THE COURT: No, I don't think the jury will have any problem with that.

MR. FLANNERY: That's my understanding of what a course of conduct means and that's also my understanding of why one would want to demonstrate through the acts of people Flores was associated with prior to the effective period, how during that period theirs were such problems they decided he had to have people interceding for him, namely, Segura.

THE COURT: I did the best I could, but if you think I am wrong, you ought to go to the Court of Appeals.

There is no use of your getting caught in a situation where we go through with this trial and assuming Mr. Flores is

convicted and it goes up to the Court of Appeals and for some reason is reversed, then you are out of luck. I don't see why you would take that chance.

MR. FLANNERY: Your Honor, my position is that the law is clear and that there isn't a difficulty that you suggest.

THE COURT: I think the law is clear along the lines that I said, and I said in view of the fact this is co a treaty, I have to take a pretty strict instruction of it.

Now, the Court of Appeals may say I am wrong.

MR. FLANNERY: Your Honor, if I take just a few more moments, I discussed in my memorandum the ex post facto cases and as I recall we discussed it briefly in the robing room last week. In the ex post facto cases, a person is being prosecuted as of a certain date. However, in such cases the government is permitted to introduce evidence prior to that date. The person who is on trial in such a case is not considered prosecuted for what is introduced in the prior period. He can only be considered prosecuted after the effective date. That's one example.

The other example is that when one is prosecuted in this courthouse for a crime and prior similar acts are introduced, those prior similar acts don't constitute a prosecution by the government. The only prosecution which

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occurs is during that effective period.

THE COURT: What is the purpose of introducing the prior similar acts?

MR. FLANNERY: Exactly what your Honor has said.

THE COURT: That's right. That's his prior

similar act.

MR. FLANNERY: That's correct. No -- well, a prior similar act -- it's one thing, your Honor, to speak about a person who alone robs several banks prior to an effective period, but it's quite another thing to talk about not only a prior similar act, but a prior joint venture. This isn't a simple case of 2 person who repeatedly robs banks alone and uses the same modus operandi. This is a person who has over the course of several years received shipments of heroin in a very similar manner using the same personnel and he continues to use the same personnel in the same manner through the effective period.

THE COURT: 'That's right.

MR. FLANNERY: The only way to demonstrate that he is using the same personnel and he is using them in the same manner is to show how he passes the baton from one French connection to another, how he puts in an interceding role an individual who continues the role that Lillian Santana had at the beginning of the conspiracy, and how he

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only comes into the conspiracy at times when there are difficulties and when those difficulties arise, whether it be spoiled heroin, whether it be missed money, or whether it be the fear that 20 kilograms are missing during the effective period, that evidence is relevant to demonstrate those things and that's my understanding of the use of prior joint venture in this situation.

It's not just a single act where he is robbing L a bank. It is an entire joint venture and it is falacious to compare this to the simple prior similar act.

THE COURT: When you say that, you are in effect saying to the jury, this fellow was violating the naccotics laws from 1968 on, aren't you?

MR. FLANNERY: It's not introduced to show -if we were to introduce that he was involved in cocaine
conspiracies as he was, and as the government has evidence,
that would be just prejudicial to show this is the kind of
person who has this kind of criminal character, that he is
always involved in narcotics, but the government is not
introducing it for that reason.

that he deals in poison in the street, but that he deals in a way similar to the way he deals now; that he has the same position in the conspiracy that he had before; that he

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is dealing with the same people that he dealt with before; that he has the same people in France then and now during the effective period. It's only for that reason that it's introduced, and it's for that reason that prior similar acts are not considered a prosecution, and it's for that reason that irrelevant prior acts, those that don't have probative value, are excluded and not introduced at trial.

THE COURT: All I can tell you is that I can see the prior similar acts as relating to what he did during the conspiracy period, and that's the only one. I am sorry, I am caught. It's an unusual situation.

MR. FLANNERY: Your Honor, could you just spend an evening and review the authority, because -- I mean,

I hasten to add --

THE COURT: I don't think you had any authorities.

All you are talking about are the rules of evidence, and I

have been trying these cases for a good many years and I am

not unfamiliar with them.

MR. FLANNERY: I wasn't suggesting that you were unfamiliar with them.

THE COURT: I am not unfamiliar with them, but I rather thought as I read it that the agreement between the United States and Spain is rather specific.

MR. FLANNERY: Your Honor, would think think that

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if the defendant took the stand, that the felonies of this defendant which occurred prior to the effective period couldn't be used to impeach him?

THE COURT: I am not going to decide that.

I don't know whether he is going to take the stand.

?. FLANNERY: What about his activities following this effective period, his flight?

THE COURT: If he takes the stand, I will sit down with you and talk about that.

MR. FLANNERY: What about the acts subsequent to the effective coverage of the treaty, that is, after April 1971, where he flees the jurisdiction?

THE COURT: I think you can put in evidence about flight. Sure, I am not worried about that. That's not the same problem at all.

MR. FLANNERY: It seems to me, your Honor, that we really are only talking about an evidence question, because in the period prior to September 3, 1970, you are permitting the government to introduce evidence about this defendant's activity.

THE COURT: Having a bearing on the knowledge and intent, the criminal intent, if you will, of whatever activities you have brought into evidence during the conspiracy period after September 3.

But what the defendant says to other, and what htye say on his behalf acting as his agents, is also important. The government --

THE COURT: What he says obviously is important. What others say on his behalf, I have some question about that.

MR. FLANNERY: Your Honor, my understanding is the government would bear the following burden, and that's the provision that evidence laws provide to make sufficient that such a practice is not abused. The government bears the burden of showing that any person who does something on his behalf is doing it within the agency relationship. We have to show it is connected.

THE COURT: All that is proving is a conspiracy, isn't it?

MR. FLANNERY: No, it' not proving a conspiracy.

THE COURT: You are talking about agency.

MR. FLANNERY: I am speaking about agency and
I am speaking about --

THE COURT: What do you find is the difference if A says to B, "To and pick up 50 kilos of heroin," and B says, "Sure, I will pick it up," and does pick it up, is that an agency, or are they conspirators? It's the same thing, isn't it?

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MR. FLANNERY: I don't know if they are exactly the same.

THE COURT: I think it is pretty close. At least in the way the conspiracy indictments are drawn it is pretty much the same thing. All these conspiracy indictments are made up of what you call the French Connection, and then the importers and the distributors -- it's all the same thing. They are all in a sense agents of each other for some purpose, but the law on it is all on the basis of conspiracy.

MR. FLANNERY: I don't think there is but a hair's difference between concepts of admissibility of co-conspirators' statements and agency statements.

THE COURT: All I am saying is, I think the government has got a burden of proving that this conspiracy existed during this period and the fact that it might have existed in '68 or '69 does not create a triable issue here under that.

MR. FLANNERY: Your Honor, if you could just bear with me a little more.

THE COURT: I can bear with you for a few minutes, yes.

MR. FLAMNERY: Prior criminal acts, if simplified to robbing a bank alone and having surveillance photos, or

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any number of things, would be easy to decide within the context of our present discussion. A prior criminal act in this context is a huge joint venture. There is no other way to describe it. That's why the government took the first position that it can prote the entire conspiracy subject to what appropriate charges you think are necessary, but in this prior joint venture, it's not comprehensible or understandable to a jury, a conversation with, for example, Tony Segura --

THE COURT: Now you are speculating again, and maybe you know the evidence. I don't know the evidence, but you are speculating.

MR. FLANNERY: Your Honor, I submitted an outline of the conspiracy just for that reason, so that we could within some parameters discuss exactly what the problem is so that we could see what I believe to be the applicability of what is the well-established evidentiary rules.

think I decided it wrongly. I rather thought that, but if you think I am wrong or haven't gone far enough from the government's point of view, I would strongly urge you to take an appeal on it, because otherwise you are facing a question of double jeopardy and I think that would be great error.

MR. FLANNERY: Well, double jeopardy -- I mean,

if we were to go to trial and be unsuccessful for failure to introduce evidence, we don't have a right of appeal.

am wrong, and I have been wrong before, I would suggest to you, if you want to do that, I would take a quick appeal and see what the Court of Appeals things about all these things, whether they think you should have a broader scope than I gave you in that opinion. If they do, then that's the law of the case.

MR. FLANNERY: Your Honor, could I just go over this one more time?

THE COURT: No, please don't go over it one more time. I really understand your point and I don't think there is any point in that. Why don't you think about it, and if you do that, let me know, and let defense counsel know, but otherwise I am going to keep a pretty strict rein, I can tell you, on this. I am going to keep a pretty strict rein on it. There may be some gray areas and when I hit gray areas, I mean, we are just talking now, I want offers of proof as to how far this goes, and I will think about what you said. All I am interested in is to be as absolutely fair as I can be at this trial, and at the same time live up to the extradition treaty.

MR. FLANNERY: Could I ask you a specific

33 1 rgas question, then, within your own ruling? Will the government 2 be permitted to introduce evidence of the conspiracy as 3 background; conversations, for example, between Rimbaud and the Frenchman as to exactly the genesis of Rimbaud's trips 5 to the States and Rimbaud's correspondence? 6 THE COURT: I don't remember that Flores had 7 anything to do with that. Did he? 8 MR. FLANNERY: It's background to the conspiracy. 9 THE COURT: I know it is, but what I think I 10 would rather do, if you put Rimbaud on or Taillet or any of 11 these fellows, I would like you to start off as to when 12 they first ran into Flores and how long they had known 13 Flores and testify as to what Flores told them to do. 14 Whether in that relationship some of this other might come 15 out, I don't know, but I want to keep a pretty strict rein 16 17 on it. MR. FLANNERY: Your Honor, for example, when 18 Flores meets Rimbaud in Montreal, the heroin that's delivered 19 to Flores is brought there by Taillet. 20 THE COURT: Is that the one where Mrs. Santana --21 MR. FLANNERY: No, this is subjsequent to that. THE COURT: That was the one that came in in 23 the musical instruments? 24

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MR. FLANNERY: That's correct, your Honor.

Now, at that time Taillet doesn't meet with Flores, he doesn't talk with him, but it is relevant to the government's proof to show how the heroin gets there and to corroborate another government witness.

THE COURT: I know, but that did not happen during the period of this conspiracy, did it?

MR. FLANNERY: Yes, but isn't the government entitled to corroborate the testimony of its witnesses as to

I have got to do, I think, is say all I can do is dig into the extradition treaty and you are putting on all this evidence from '68 through '71, and the jury goes out and says, "Boy, that was a big operation," and I don't think I can do that. I think that's just your problem. I don't think I can do it. In the ordinary case that's just what happens, I agree with you, but here I am faced with a situation where that cannot happen.

Mr. Flores cannot be convicted because he might have had something to do with that delivery in Montreal which came in in musical instruments. Have you any questions about it?

MR. FLANNERY: But if he is in Montreal at the same time, according to another witness, and another person is bringing heroin there, even if he doesn't tell about the

conversations --

THE COURT: When?

MR. FLANNERY: If Taillet --

THE COURT: If Taillet says, "I had some conversation with Rimbaud in Atlanta in 1968," offhand I don't see that has much bearing.

MR. FLANNERY: If in January of 1969 Flores agrees to buy 12 kilos of heroin and says he will pick them up in Montreal and he goes to Montreal to get it, and at that time Taillet is the person who delivers it to Rimbaud --

THE COURT: The first part of that, if that is the evidence, if Taillet says that Flores told him to take 12 kilos of heroin to Montreal, that has a bearing on Flores' knowledge and intent, obviously.

MR. FLANNERY: Excuse me, your Honor, I said that Flores said to Rimbaud, "I will meet you in Montreal to pick up the heroin." Flores goes to Montreal to meet Rimbaud.

THE COURT: I think that we are trying to do this all in little pieces and I think that's very dangerous.

MR. FLANNERY: I just want an idea, assuming the facts as stated, of what your understanding is of what evidentiary principals you are applying at the trial.

THE COURT: I am applying the treaty to the trial and that's what it is going to be. Every time this

comes up you have got to show me where this has a bearing on the conspiracy in the period allowed by the treaty, and where I have said I will receive evidence as to anything happening before that bearing on Flyoes' knowledge and intent, but whether Rimbaud and Taillet and all these fellows -- and I heard the evidence at the other trial.

I know a lot of things that went on, about what they were doing, and I want it to be sure that the jury here properly understands what they are trying. They are not trying this whole conspiracy, they are trying the part that's allowed by the extradition treaty. They have got to stick to that.

MR. FLANNERY: But the government is entitled to a fair trial, too.

THE COURT: That's right. A fair trial within the limits of the extradition treaty which the United States entered into for better or for worse.

MR. FLANNERY: It is my understanding the law of the forum is not c vered by a treaty of the United States, and again I ask you with respect to Taillet, if Taillet, for example, in February of 1969 goes to make a delivery to Rimbaud with heroin intended for Flores, but Taillet never meets with Flores --

THE COURT: Offhand, I would say no.

MR. FLANNERY: You would say no to that.

THE COURT: If that's the story, I would say no to that.

MR. FLANNERY: If I may just ask you, it would be your decision to exclude any statement by any government witness?

these statements. You are just broadening me out. You gave me an example and I said on that example I would rule it out, but you are trying to generalize. But it would seem to me I hope the procedure would be that the government would try this case on the basis of what happened after this date, whatever it is, and put this witness on and of course they can testify as to how long they knew Flores and what statements he might have made to him before that, from which the jury can evaluate whether Flores, on the basis of his acts and the testimony as to the conspiracy during the period allowed by the extradition treaty, had the knowledge and intent. I don't see why that's so awfully difficult. I know it is different from the way that the government has been trying these cases.

MR. FLANNERY: As I said before, I read

Papadakis prior to the pretrial conference and understood

that everything I am saying today would be admissible.

THE COURT: If you don't think you can live with

this, I would go to the Court of Appeals right now.

MR. FLANNERY: I would have to confer with my office for exactly that.

THE COURT: I understand that.

MR. FLANNERY: Any statement therefore --

THE COURT: I am not going to give you any general guidelines and I think my opinion was awfully clear on it, and I don't see why you can't follow it, or if you can't follow it, go up to the Court of Appeals and see if you can't get it broadened.

MR. FLANNERY. Evidence of statements other than the defendant's own statements, evidence other than the defendant's own acts prior to September 3, 1970, will be excluded, is that correct?

THE COURT: If make a broad statement like that, I will have to answer it broadly. I would say by and large that would be true, but I can't say now without knowing more about it what the exceptions might be, if there are any.

MR. FLANNERY: I think I understand your position now, your Honor, thank you.

THE COURT: Thank you very much.

We will then proceed on Wednesday morning at 10 o'clock, and we will go on on Thursday, but we will not proceed on Wednesday, Friday or Monday, and then we will

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| 1  | rgas 40                                                       |
| 2  | resume on Tuesday.                                            |
| 3  | MR. FLANNERY: I will inform chambers as soon                  |
| 4  | as a decision is made.                                        |
| 5  | THE COURT: All right, thank you very much.                    |
| 6  | MR. FLANNERY: Your Honor, there is just one                   |
| 7  | other matter, and that is, if the trial should proceed on     |
| 8  | Wednesday, as it is assume it will presently, the government  |
| 9  | would request that security precautions be taken for this     |
| 10 | courtroom as a result of threats known to the government, and |
| 11 | it's necessary for the marshals to provide such security      |
| 12 | that I can make an application to the Judge for you to order  |
| 13 | that security be provided.                                    |
| 14 | THE COURT: How much security do you want?                     |
| 15 | Do you want a marshal here in the courtroom?                  |
| 16 | MR. FLANNERY: I think a marshal at the door and               |
| 17 | certain protection for the witness room and the jury room.    |
| 18 | I think they have their own arrangements which they follow    |
| 19 | in their own cases.                                           |
| 20 | MR. ASNESS: Can I ask what threats we are                     |
| 21 | talking about?                                                |
| 22 | THE COURT: No, let's not get into that.                       |
| 23 | MR. ASNESS: Are they to the defendant?                        |

know what threats he is talking about, but I do understand in

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THE COURT: Let's not get into that. I don't

UNITED STATL DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

. - v - : AFFIDAVIT

ANTONIO FLORES, :

Defendant. :

STATE OF NEW YORK )
COUNTY OF NEW YORK : 88.:
SOUTHERN DISTRICT OF NEW YORK)

JOHN P. FLANNERY, II, being duly sworn, deposes and says:

- 1. I am an Assistant United States Attorney in the Southern District of New York in the office of Robert B. Fiske, Jr., United States Attorney and am fully familiar with and responsible for the prosecution of the above captioned matter.
- upon information and belief, obtained pursuant to interviews with witnesses who will appear at the trial of the above captioned matter, specific offers of proof which the Government intends to introduce at trial. The Government has already set forth a description of the conspiracy in its memorandum filed with the Court on April 19, 1976; that factual description, as well as the concomitant legal arguments contained there, are herein incorporated by reference. The Government realizes the Court does not have need for any detailed description of this case due to its familiarity with the evidence adduced at the first trial, United States v. Santana, et al., when Flores was a fugitive.
- 3. The Government is making these specific offers of proof however because a review of the argument on April 19, 1976 concerning whether the Court would admit or

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exclude certain evidence was in response to extemporaneous remarks by the Government in hypothetical terms.\* The Government is concerned whether as a result of posing hypothetical questions the Court's decision is specifically concrete, a "controversy", subject to review by the United States Court of Appeals for the Second Circuit. The Government seeks to remedy this possible difficulty. The Government accordingly respectfully requests that the Court decide, with respect to the follows; offers of proof, whether it will admit or exclude each item lest the Government spend time and effort on an appeal improperly based.

- 4. Item 1. The Government intends to introduce proof that in the summer of 1968 Rimbaud corresponded with Joseph Lucarotti who had a partner in prison later identified as Ralph Santa. The Government will show that Lucarotti had a buyer of heroin and asked Rimbaud to find a source. The Government seeks to introduce the fact of correspondence, the content of the correspondence and the prior relationship of Lucarotti and Rimbaud.
- 5. Item 2. The Government intends to introduce evidence that Rimbaud in July of 1968 went to Montreal, cabled Lillian Santana, Ralph's wife, and upon her arrival in Montreal, Rimbaud spoke to Lillian Santa, and Dee Burgos, the "buyer's wife", about supplying them with heroin. The Government intends to introduce the acts and the conversations resulting in Santana paying Rimbaud \$16,000 for 5 kilos of heroin.

\*One example follows:

"Mr. Flannery: . . if Taillet, for example, in February of 1969 goes to make a delivery to Rimbaud with heroin intended for Flores, but Taillet never meets with Flores --

added) THE COURT: Offhand, I would say no". (emphasis

- 6. Item 3. The Government intends to introduce evidence that Rimbaud went to France and discussed with his French partner, Felix Olivie, how they would transport 5 kilos of heroin. Olivie found a man named Gilbert Bordure who did fly to Montreal to meet Rimbaud but Bordure hid the heroin from the police and told Rimbaud this.
- 7. Item 4. The Government intends to introduce evidence that in August of 1968, Rimbaud went to meet with Flores, taken there by Lillian, told him what happened to the heroin and Flores told Rimbaud he would leave the United States and go to France to buy heroin from Rimbaud.
- 8. Item 5. The Government incends to introduce evidence that Flores went to Paris, France with three other men, Herman Rivera, Angel Rivera (Morales), and John "Buggy" Brown and did get, not 5 kilos, but only 2 kilos from Rimbaud.
- 9. <u>Item-6.</u> The Government intends to introduce evidence that Rimbaud spoke with Flores about Flores' disappointment with the 2 kilos and Flores' travel plans to return to New York via Boston.
- 10. Item 7. Again, the Government intends to introduce evidence of Rimbaud's conversations with Olivie in which conversations Olivie "puts off" Rimbaud reassuring him that the heroim is being obtained. Further, finally, after Flores has left France, the Government intends to introduce the argument between Rimbaud and Olivie about Olivie's tardiness.
- 11. Item 8. The Government intends to introduce Jones' conversation in September of 1969 with Flores and Martinez in which Jones and Martinez are asked to go to Boston by Flores to get the "junk" from H. Rivera and Brown because Rivera and Brown are frightened.

- 12. Item 9. The Government intends to introduce evidence that Jones and Martinez went to Boston, met and spoke with H. Rivera and Brown and returned to New York with.2 kilos of heroin. The Government intends to introduce the statements of H. Rivera and Brown to Jones.
- evidence that in about October of 1968, Rimbaud had a meeting with two Corsicans, Jean Baptiste Croce ("Batti") and Joseph Mari ("Ze Le Frise"), "top men" in narcotics, who said they would supply large quantities of heroin if Rimbaud would put them in touch with his American buyer. Rimbaud agreed. Rimbaud was then introduced to Taillet. The Government intends to introduce the statements of all these named parties.
- 14. Item 11. The Government intends to introduce evidence that Edmond Taillet, an entertainer, was recruited by Joseph Marro to act as a courier for the two Corsicans by carrying about 12 kilos of heroin hidden in musical amplifiers. Taillet agreed. Taillet was then introduced to Rmbaud. The overnment intends to introduce the statements of all these named parties.
- 15. Item 12. The Government intends to introduce evidence that in January of 1969, Rimbaud met with Flores in New York. Rimbaud asked Flores if he wanted the heroin. Flores said he wanted it and would pay \$10,000 per hilo.
- evidence that Rimbaud went from New York to Montreal where he met Taillet, spoke with him about how to transfer the heroin, and ultimately received about 12 kilos from Taillet. The Government seeks to introduce Taillet's and Rimbaud's account of this meeting and their conversations.
- 17. Item 14. The Government intends to introduce evidence that Flores made two trips to Montreal to discuss the transaction to receive the 12 kilos and to pay Rimbaud about \$125,000.

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- 18. Item 15. The Government intends to introduce evidence that, in about February of 1969, Marro asked Taillet to locate larger amplifers and a band which might carry the amplifiers to Montreal.
- 19. Item 16. The Government intends to introduce evidence that Taillet left France with the heroin laden amplifiers and Johnny Holliday.
- 20. Item 17. The Government intends to introduce evidence that in March of 1969, Rimbaud flew to New York, sent a telegram for Flores to meet him and was then arrested.
- 21. Item 18. The Government intends to introduce evidence that after Rimbaud was detained in "West Street," he there met with Flores who had been arrested. Flores asked for the "french connection". Rimbaud declined. Flores offered to get Rimbaud an attorney, Flores' uncle.
- 22. Item 19. The Government intends to introduce evidence that subsequently Horacio Quinones, an attorney came to meet with Rimbaud at West Street and told Rimbaud, Flores had sent him. Quinones asked on behalf of Flores for Rimbaud's "french connection"; Rimbaud at last agreed and Quinones told Rimbaud that he, Quinones, went with Flores from New York to Paris to meet Rimbaud's "french connection."
- 23. Item 20. The Government intends to introduce evidence that about May or in June of 1969 Taillet met Flores and Croce in his Paris apartment and a New York rendezvous was arranged between Flores and Taillet so that Flores could pay Croce through Taillet.
- 24. Item 21. The Government intends to introduce evidence that in about Many or June of 1969, Taillet travelled to New York and was paid about \$150,000 by Flores.

- 25. Item 22. The Government intends to introduce evidence that at Marro's instructions Taillet seduced Noella Richards in Montreal, Quebec and convinced her to transport her car to France in July of 1969 where heroin was therein concealed without her knowledge. Thereafter, the car was transported to Montreal and to New York for delivery.
- 26. Item 23. The Government intends to introduce evidence that Taillet met with Flores who in turn introduced Taillet to Anthony Segura, "his brother", who was to act thereafter, as Flores representative. This meeting occurred toward the end of July 1969.
- 27. <u>Item 24.</u> The Government intends to introduce evidence that, about a day later, Segura received the car from Taillet and thereafter paid him for the heroin. Segura at one point told Taillet that he, Segura, would have to talk to Flores about damage to the merchandise.
- 28. Item 25. The Government intends to introduce evidence that in about September or October of 1969, a car owned by Ginette containing about 50 kilos of heroin, packed in a manner similar to the Noella car, was conveyed in New York by Taillet to Segura in exchange for money paid Taillet by Segura. Segura, however, still owed Taillet money.
- 29. <u>Item 26.</u> The Government intends to introduce evidence that in about October of 1969, Flores paid Taillet the balance of the money due Taillet and at the time complained to Taillet about the quality of the heroin.
- 30. Item 27. The Government intends to introduce evidence that in about November to December of 1969, Taillet, at Marro's instructions, met a Roger Dubuis and arranged to convey a car in Dubuis' possession to Segura. However since Segura had been arrested, the car containing heroin was conveyed not to Segura but instead to Martinez who paid Taillet the money due him.

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31. The Government once again respectfully asks the Court to rule with respect to the admissibility of the "27" items" hereinabove set forth to assure that the appeal taken by the Government is not an inchoate exercise.

JOHN P. FLANNERY, II Assistant United States Attorney

Sworn to before me this 22nd day of April 1976

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1 MP UNITED STATES DISTRICT COURT 3 SOUTHERN DISTRICT OF NEW YORK 4 5 UNITED STATES OF AMERICA 6 VS 73 Crim 19 ANTONIO FLORES, Defendant. : 9 10 New York, N. Y. 11 April 22, 1976 - 9:00 a.m. 12 13 Before 14 HON. DUDLEY B. BONSAL, 15 District Judge. 16 17 APPEARANCES: 18 ROBERT B. FISKE, JR., Esq., 19 United States Attorney for the Southern District of New York 20 JOHN P. FLANNERY, II, Esq., Assistant United States Attorney 21 BARRY ASNESS, Esq., 22 Attorney for Defendant, and STUART SHAW, Esq., 23 24 25

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THE CLERK: United States of America versus Antonio Flores.

MR. FLANNERY: Government is ready, your Honor.

THE COURT: Well, what is the Government ready for?

I think the Government asked for this hearing, and you can

do ahead, Mr. Flannery.

MR. FLANNERY: Your Honor, there are two matters that I want to cover. One is related to an affidavit I submitted to your chambers this morning.

THE COURT: You have seen this affidavit?

MR. ASNESS: Yes, Judge, just now.

MR. FLANNERY: The affidavit is an attempt to make sure that the Government's efforts to appeal this Court's decision are focussed in a manner that constitutes a controversy and is helpful both to the Court and the Government in pursuing the questions that were raised in our discussion.

I think that the matter was fairly clear in my own mind and I think the Court's as to the Government's position.

However, I am concerned that because there wasn't any specific offer of proof, although I did set forth the facts of the case in a memorandum, the Court of Appeals may find difficulty understanding exactly what we are speaking to concretely, although I attempted --

THE COURT: Let me ask you this:

As I read this, Mr. Flammary, I get the impression that the Government is proposing to go forward here pretty much on the basis of the same evidence that was brought out in the prior trial.

MR. FLANNERY: Pretty much, your Honor, yes.

THE COURT: And this is to sort of start off with what happened in 1968, 1969, 1970 and so forth? Isn't that so?

MR. FLANNERY: That's correct, your Honor.

THE COURT: And I have indicated to you that I didn't think that was appropriate, in view of my view of the extradition treaty, and I thought the first thing you wanted to ask the Court of Appeals is whether I was right on the extradition treaty.

I suppose that is a problem that they can decide.

MR. FLANNERY: Well, your Honor, the problem with that is that it won't be concretely defined by the facts of this case, and the Government will be put in the position, if the Court decides that it is not concretely defined but just for jurisdictional reasons, of denying the appeal and never reaching the question that I understand you to be addressing at this very moment.

THE COURT: Well, you are addressing the question.

You want to appeal.

MR. FLANNERY: Yes; we do wish to appeal, your Honor, and what I have tried to do: I have tried to set forth items in this affidavit which I think are fairly clear within your Honor's own rulings.

THE COURT: Well, let me start off by saying that if it is the Government's purpose at this trial of Mr. Flores to try him on the same basis that they tried Santana and Quinones and Rivera and these other people about three years ago, I would say that that would go beyond the treaty, and that gives you a point, doesn't it?

I would say that went beyond the treaty, and the record of that trial, I suppose, is available.

Secondly, I would indicate that any of these items in which any of these witnesses speak of conversations with Mr. Flores or testify as to his activities --

MR. FLANNERY: Your Honor, I direct your attention, for example, to Items 4 through 6, just as an example.

IE COURT: Well, I have looked at it. For instance.

Items 5, 6 --

MR. FLANNERY: 8, your Honor.

THE COURT: 11, 15, 17, 21, 22, 24, 26 -- and when I say "Items", I am talking about paragraph numbers --

MR. FLANNERY: Oh, I am sorry.

THE COURT: -- because you've got two sets of

numbers here, which makes it confusing.

MR. FLANNERY: I am sorry, your Honor. Could we go through those numbers again, because I am not certain to which ones you are referring.

THE COURT: You have two numbers on each one.

MR. FLANNERY: If you will indicate whether you are referring to the paragraph or the item --

THE COURT: All right. The first one is Paragraph 8, marked Item 5; 9 marked Item 6; 11 marked Item 8; 15 marked item 12; 17 marked Item 14; 21 marked Item 18; 22 marked Item 19: 24 marked Item 21; 26 marked Item 23; 29 marked Item 26.

As to those, I think if properly presented I should think they would have a bearing as to the effect of Mr. Flores knowledge and intent.

MR. FLANNERY: Let me ask you a question:

With respect to Paragraph 7, Item 4, that paragraph describes a conversation between Flores and Rimbaud.

THE COURT: I would include that. Have you any thers?

MR. FLANNERY: Item 20, which is Paragraph 23 in the affidavit, ties Flores and Croché in the Paris apartment, and a New York rendezvous was arranged --

THE COURT: Wait a minute. Which one are you

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talking about?

MR. FLANNERY: Paragraph 23, Item 20.

THE COURT: Oh, Paragraph 23.

Yes; that would be relevant.

MR. FLANNERY: And, as you read the other items with the corresponding paragraph numbers, those you would exclude?

THE COURT: I am not going to rule. I haven't seen the witnesses. I think you are going into an arbitrary exercise.

MR. FI ANNERY: Based on the offer of proof of what the Government would introduce.

THE COURT: I think -- I would say that hearing those things, without hearing the witnesses, these particular items that I have reviewed would bear on the defendant's knowledge and intent, and therefore even though they refer to a prior time period, they could probably be admissible for that purpose.

But I am not going to bind myself. I haven't heard the witnesses. I haven't done anything. I think you are asking me to do a lot. And I haven't heard the objections from the defendant.

MR. FLANNERY: Certainly.

THE COURT: But if you want that as an indication,

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2 I will do that.

MR. FLANNERY: Your Honor, if the proof were, as indicated here, merely restricting yourself to your application of the treaty to the conspiracy based on your experience at the prior trial --

THE COURT: I have told you, and I will say again: if you plan to have a rerun of the prior trial, of which the record is available, with respect to Mr. Flores, I think you are going beyond the terms of the treaty. I have said that, and I won't say it again. I have said that very clearly.

MR. FLANNERY: I am sorry, your Honor.

It is clearly the Government's position that ac-

THE COURT: That's right.

MR. FLANNERY: The Government, therefore, based on your decision on Monday and your further remarks today, gratefully accepting your remarks as helpful, it believes, in pursuing an appeal, will file a notice of appeal this morning and therefore makes a motion for a stay pending the appeal.

THE COURT: A stay of what?

MR. FLANNERY: A stay of the proceedings in this court, that is, the trial in the matter of Antonio Flores, pending the decision of the Court of Appeals.

I have conferred with counsel for the defense on

this question and there is no objection. In fact, they say that this is consonant with their earlier desire to have an adjournment.

THE COURT: Well, counsel will speak for himself.
What do you have to say, Mr. Asness?

MR. ASNESS: Well, I have two things to say:

Number one, it has become apparent that the Government is attempting to try Mr. Flores in the same manner they tried the other defendants, regardless of the treaty, which, of course, the Court has ruled on.

Number two, your Honor, because of the prior statements, we want a continuing objection on the record as to the
jurisdiction of this Court in having Mr. Flores on trial for
any means. If it is going to be appealed, we are going to
answer it, and we want that to be very clear.

As far as a one- or two-week stay is concerned, we have no objection at all, Judge.

of this business. Maybe it's necessary. As I understand it, you don't want to try this case today; is that right?

MR. ASNESS: Could I have a moment, Judge?

THE COURT: In other words, if it is agreeable, I would rather put the trial over to a date certain, and then you gentlemen can see if you can get an expedited appeal in

the Court of Appeals, and if by that time the Court of Appeals has not ruled, you can come back, and we will see what we can do with it. I don't see any problem.

MR. ASNESS: Your Honor, if my client did want to qo to trial today, would the Court not grant the Government's request?

THE COURT: I mentioned the other day, if the sovernment feels there are issues here, I think in fairness to bot sides if there is an issue as to the scope of this trial, it would be much better to have that decided in advance instead of having it decided later, and I have menimoned that to the Government, last time.

MR. ASNESS: Judge, may I ask the Court -- my client is asking me to do so -- if this Court would consider lowering his extremely high bail.

THE COURT: Well, that's another question. I said when that bail was fixed, he didn't have a lawyer.

MR. ASNESS: Well, he has one now.

THE COURT: That is a different question, and I am not going to mix the two of them up.

I told Mr. Flores at the time the Government asked for that bail and he didn't have a lawyer, I said this was an academic performance, and since he has a lawyer now, I would obviously hear any application on bail.

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MR. ASNESS: Would you like me to wait until you have finished this, Judge?

THE COURT: Yes. Lat's not mix the two together.

MR. ASNESS: We are ready for trial today, your Honor.

THE COURT: All right. What I think I will do, at the Government's request, is to set the trial over to a date to let you gentlemen see what you can do about the question of an expedited appeal.

You say you are going to file this today?

\* MR. FLANNERY: We are going to file the notice
today, and it is required that we receive approval from the
Solicitor General.

THE COURT: Yes.

MR. FLANNERY: But I have already contacted the Solicitor General, and I have made arrangements so we could expedite the approval there, and I have spoken to the Court of Appeals to make arrangements to apply there for leave to proceed on typewritten briefs and for an expedited appeal, and I have drafts of those papers prepared.

MR. ASNESS: Judge, I just would like the Court to know that although I would like it expedited also, Mr. Shaw will be handling this, and the entire structure of the trial is going to be determined, I assume, by the results coming

down from the Court of Appeals.

I don't want to rush Mr. Shaw. He is going to respond fully and do a lot of legal research.

May I ask how long this will take, as the attorney

about all this. What I would like to do is to put off the trial to, say, two weeks from now and give you a chance to see what happens and what you do in the Court of Appeals, and if at the end of that time, if you wishto have another pretrial and report on it, why, we can consider what the next step is.

Isn't that the appropriate thing? It seems to me that would be appropriate.

MR. FLANNERY: Your Honor, I think it would probably be better to have a stay pending appeal and to have the Government and/or defense counsel report to the Court about the briefing schedule and the date of argument.

not up to me. Once you file this appeal, I am ousted from jurisdiction, and that is why I would like to put it on the basis that you go ahead and file the appeal. I will put the trial off now before you file it.

MR. FLANNERY: That's right.

THE COURT: And once you file it, then it is up to the Court of Appeals. You see how you come out, and if you want to see me again, I will be glad to see you.

MR. FLANNERY: All right.

Your Honor, we won't find ourselves in a position where the Court will call the matter for trial if the brief-ing schedule in the Court of Appeals is longer than --

THE COURT: Well, there are so many academic questions. You are going to have to work that out with the Court of Appeals.

MR. FLANNERY: Certainly.

THE COURT: And if the Court of Appeaks takes this on and establishes a briefing schedule with you, that is their business. I haven't any control over that.

MR. FLANNERY: But I mean, you would of course set the trial date accordingly.

THE COURT: Let's see how you get along up there, will you, because I rather think -- and you fellows have spent a lot of time on the law -- that once the Government appeals this, for the time being the matter is in the Court of Appeals, and it's up to them.

I would agree, you should have an expedited appeal so that this matter can be concluded as soon as possible. I am sure you fellows at the defense table agree with that.

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MR. ASNESS: Yes.

THE COURT: All right. Let's proceed that way.

On the question of bail, I would like to have -- and I can do that even if they take an appeal -- the question of bail is always open, but I think if you want to do that now, I think I would rather have an application with some kind of evidentiary data.

MR. ASNESS: Judge, I would rather do it right now, on behalf of the defendant. We have a situation where the bail is extremely high in amount, \$3,000,000. We have an incarcerated defendant, and this defendant, although the Court has heard in the other trials that he allegedly was involved in narcotics transactions, this defendant has convictions only for policy, Judge, and the closest thing to narcotics would be the Spanish situation, in which we are dealing with marijuana.

THE COURT: Of course, he starts with one problem here, and that is that there isn't any dispute here, as I recall it, that the defendant was a fugitive. Is that right?

MR. FLANNERY: That's correct, your Honor.

MR. ASNESS: There is no question that he left the jurisdiction, and that is going to weigh very heavily in the Court's opinion on that. But there are extenuating circumstances, Judge.

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|         | THE | COURT: | Well, | I | would | like | to | hear | those, | on |
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| papers. |     |        |       |   |       |      |    |      |        |    |

MR. ASNESS: Let's assume he was a fugitive, Judge. We are talking about five years ago. This is five years later. He is older. I don't think he wants to run any more. I think he would like to be out and defend himself, and \$3,000,000 is just so far out of reach there is nothing to discuss, Judge.

I am asking for a \$25,000 in this case.

MR. FLANNERY: Your Honor, three million --

THE COURT: I am going to deny that, but I will tell you what I am going to do. If you want to make an application on papers and include some material as to why you think the bail should be reduced and to what amount and give the Government an opportunity to answer that, I will be glad to consider it.

MR. ASNESS: I know I can always do that. Is the Court going to lower it today?

Mr. Flores was a fugitive, and when the Government mentioned the bail, I said in my mind it's academic, because he hasn't got a lawyer, and I didn't want him to say anything without a lawyer, so I left it at that.

Now, he's got a lawyer, and if you want to make an

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability from my (our) stanographic notes of this paceoding

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